

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NIC SALOMON,

Plaintiff,

v.

**KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN CAPITAL LLC,**

Defendants.

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**CIVIL ACTION NO.
3:15-CV-666-M**

**APPENDIX IN SUPPORT OF DEFENDANTS KROENKE
SPORTS & ENTERTAINMENT, LLC AND OUTDOOR CHANNEL
HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

<u>Exhibit No.</u>	<u>App. No.</u>	<u>Document Description</u>
1	App.001 – App. 003	Affidavit Of Kevin D. Evans In Support Of Defendants Kroenke Sports & Entertainment, LLC and Outdoor Channel Holdings, Inc.'s Motion Pursuant to Fed. R. Evid. 702 to Exclude Testimony of Kevin Kreitzman
1-A	App. 004– App. 061	Copy of September 14, 2018 Expert Report of Kevin Kreitzman
1-B	App. 062– App. 100	Excerpted Transcript of the October 24, 2018 Deposition of Kevin Kreitzman
1-C	App. 101– App. 140	Copy of October 12, 2018 Rebuttal Expert Report of Karyl Van Tassel
1-D	App. 141– App. 146	Excerpted Transcript of the July 17, 2018 Deposition of Jeff Holowaty
1-E	App. 147– App. 149	Excerpted Transcript of the May 16, 2018 Deposition of Nicolas Salomon
1-F	App. 150– App. 153	Excerpted Transcript of the May 17, 2018 Deposition of Nicolas Salomon

Appendix In Support Of Defendants KROENKE SPORTS & ENTERTAINMENT, LLC And OUTDOOR CHANNEL HOLDINGS, INC.'s Motion Pursuant To FED. R. EVID. 702 To Exclude Testimony Of Kevin Kreitzman And Request For Hearing

<u>Exhibit No.</u>	<u>App. No.</u>	<u>Document Description</u>
1-G	App. 154– App. 158	Excerpted Transcript of the June 20, 2018 Deposition of Thomas Allen
1-H	App. 159– App. 162	Excerpted Transcript of the August 30, 2018 Deposition of James Martin
1-I	App. 163– App. 166	Excerpted Transcript of the June 7, 2018 Deposition of Roger Werner
1-J	App. 167– App. 170	Excerpted Transcript of the September 5, 2018 30(b)(6) Deposition of Scott Long

Respectfully submitted,

Date: November 13, 2018

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CERTIFICATE OF SERVICE

This is to certify that on this 13th day of November, 2018, I caused the foregoing **APPENDIX IN SUPPORT OF DEFENDANTS KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR CHANNEL HOLDINGS, INC.'S MOTION FOR SUMMARY JUDGMENT** to be electronically submitted with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court.

/s/Kevin D. Evans
Kevin D. Evans

3. Mr. Kreitzman's deposition was taken in this action on October 25, 2018. Excerpts of the transcript of Mr. Kreitzman's deposition are attached hereto as Exhibit B.

4. On October 12, 2018, Defendants served Plaintiff with the Rebuttal Expert Report of Karyl M. Van Tassel. A copy of Ms. Tassel's report is attached hereto as Exhibit C.

5. On July 17, 2017, the deposition of Jeff Dean Holowaty was taken in this action. Excerpts of the transcript of Mr. Holowaty's deposition are attached hereto as Exhibit D.

6. The deposition of Plaintiff Nicolas Salomon was taken in this action on May 16, 2018, and continuing through May 17, 2018. Excerpts of the transcript of Mr. Salmon's deposition on May 16 are attached hereto as Exhibit E. Excerpts of the transcript from May 17 are attached hereto as Exhibit F.

7. On June 20, 2018, the deposition of Thomas D. Allen was taken in this action. Excerpts of the transcript of Mr. Allen's deposition are attached hereto as Exhibit G.

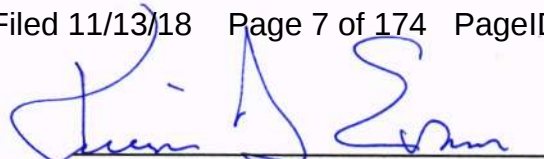
8. On August 30, 2018, the deposition of James A. Martin was taken in this action. Excerpts of the transcript of Mr. Martin's deposition are attached hereto as Exhibit H.

9. On June 7, 2017, the deposition of Roger Werner was taken in this action. Excerpts of the transcript of Mr. Werner's deposition are attached hereto as Exhibit I.

10. On September 5, 2018, the 30(b)(6) deposition of Scott M. Long, representative of Defendant KSE, was taken in this action. Excerpts of the transcript of Mr. Long's deposition are attached hereto as Exhibit J.

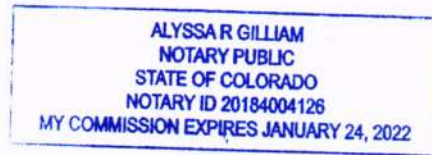
11. I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 13, 2018


Kevin D. Evans

Subscribed and Sworn
Before me this 13 day of
November, 2018


Notary Public



**IN THE UNITED STATES DISTRICT COURT
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NIC SALOMON,

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**CIVIL ACTION NO.
3:15-CV-666-M**

EXHIBIT A

**AFFIDAVIT OF KEVIN D. EVANS IN SUPPORT OF
KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR
CHANNEL HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

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NIC SALOMON,

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vs.

KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC. AND PACIFIC NORTHERN CAPITAL
LLC,

Defendants.

Civil Action No. 3:15-CV-00666-M

EXPERT REPORT OF KEVIN KREITZMAN, MBA

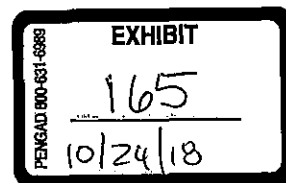


TABLE OF CONTENTS

I.	INTRODUCTION AND OVERVIEW	1
A.	<i>Qualifications</i>	1
B.	<i>Purpose and Scope of Work</i>	2
C.	<i>Summary of Conclusions</i>	2
D.	<i>Material Relied Upon</i>	6
II.	BACKGROUND.....	6
A.	<i>Background</i>	6
B.	<i>Chronology of Events</i>	7
III.	BUSINESS ANALYSIS	12
A.	<i>The Aerial Camera Business</i>	12
B.	<i>Industry - Competition</i>	14
IV.	FINANCIAL ANALYSIS	14
A.	<i>Historical Performance</i>	14
B.	<i>Historical Financials</i>	14
C.	<i>Projections</i>	16
D.	<i>Lost Compensation</i>	16
E.	<i>Legal Fees and Costs Incurred in Relation to the Proposed Transaction</i>	17
F.	<i>Benefit of the Bargain Losses</i>	18
i.	<i>Scenario 1: Valuation of Aerial Camera Business Based on Projected Cash Flows</i> ..	18
ii.	<i>Scenario 2: Valuation of Aerial Camera Business Based on Valuation Performed by Financial Advisor of Outdoor Channel</i>	33
iii.	<i>Scenario 3: Valuation Based on Actual Price of Proposed Acquisition of Aerial Camera Business</i>	36
G.	<i>Disgorgement of Outdoor Channel Profits</i>	39
H.	<i>Punitive Damages</i>	40
	APPENDIX I: RESUME.....	43
	APPENDIX II: DOCUMENTS RELIED UPON	47
	APPENDIX III: PUBLICATIONS.....	55

I. INTRODUCTION AND OVERVIEW

A. *Qualifications*

1. My name is Kevin Kreitzman. I currently hold the position of Director at Berkeley Research Group ("BRG"). Over the past thirty years, my academic and professional research has focused largely on valuation, financial modeling, and the assessment of commercial damages. Prior to joining BRG, I served as a Principal at the ERS Group, Director in the Forensics and Litigation practice at KPMG LLP and as a Senior Economist at LECG. Throughout the 1980s and 1990s, I held a number of senior officer and other management positions at various firms participating in the industries for telecommunications, investment banking and investment management, and insurance. I have also been a lecturer at several universities in the San Francisco Bay Area, most recently at the University of California at Berkeley, where I developed and taught courses in Corporate Finance, Business Valuation, and Estimating Damages in Litigation for the University of California at Berkeley Extension. I hold an MBA degree in Finance from the University of Wisconsin at Milwaukee.

2. I have previously testified as an expert witness and have conducted complex damages studies in cases involving such issues as bankruptcy, intellectual property and patent infringement, fraud and fraudulent conveyance, distributor termination, breach of contract, breach of fiduciary responsibility, tax liability, employee stock ownership plans, mergers and acquisitions, and antitrust. In the current matter, BRG is being compensated for my services at my standard billing rate of \$400 per hour, and that compensation is not dependent on the outcome of this matter. A recent copy of my *curriculum vitae* is attached to this report as Appendix I.

B. *Purpose and Scope of Work*

3. I have been asked to provide a reasonable estimate and calculation of economic losses incurred by Plaintiff Nic Salomon ("Plaintiff" or "Mr. Salomon") as a result of the wrongdoing he alleges was committed by defendants Outdoor Channel Holdings, Inc. ("Outdoor Channel") and Kroenke Sports and Entertainment, LLC ("KSE"). As set forth in this opinion, these losses include (a) lost compensation, (b) benefit of the bargain losses, (c) legal expenses incurred in connection with attempting to purchase SkyCam and CableCam (together referred to as the "Aerial Camera Business"), and (d) disgorgement of profits. For benefit of the bargain damages, I present three alternate scenarios. Scenario 1 involves a valuation which is based on the projected cash flows of the Aerial Camera Business. Alternatively, I present Scenario 2 which is based on the Lazard Frères valuation of the Aerial Camera Business of between \$7 and \$9 million. Scenario 3 assumes that the price of the proposed acquisition by Mr. Salomon and PNC is the value of the Aerial Camera Business. My primary conclusions are summarized as follows. In addition, I provide a preliminary opinion regarding punitive damages, which will be supplemented if the jury determines punitive damages are warranted.

C. *Summary of Conclusions*

4. This section summarizes my findings and conclusions to date. Because the report contains a detailed analysis, the following summary does not reflect all of my findings and conclusions or all of the bases for those findings and conclusions. I may revise my analyses in light of any additional facts or evidence that comes to light later in these proceedings. The facts or data upon which I am basing the opinions and inferences discussed in this report are of a type reasonably relied upon by damages experts.

5. Plaintiff claims lost compensation totaling \$1,362,755 through February 4, 2019, the date of the start of the trial. The prejudgment interest on these wages is \$157,679 and the total lost wages damages are \$1,520,434.¹

6. Plaintiff incurred legal expenses and other costs paid in connection with the transaction of \$12,622. The prejudgment interest (5% for 3.94 years) on these costs is \$2,486 and the total legal expenses and costs are \$15,108.²

7. The Benefit of the bargain damages Scenario 1, based on the value of the Aerial Camera business using management projections are \$1,023,809. Prejudgment interest from the time of the filing of the lawsuit (February 27, 2015) to the time of the trial (5% for 3.94 years) is \$201,588 and total damages plus prejudgment interest is \$1,225,397.

8. Total Damages under Scenario 1 are: **\$2,760,939**, which includes benefit of the bargain damages (plus prejudgment interest) of \$1,225,397, lost compensation (plus prejudgment interest) of \$1,520,434 and legal expenses and costs (plus prejudgment interest) of \$15,108.

9. The range of benefit of the bargain damages for Scenario 2, based on the values of the Aerial Camera business using the valuation range provided by Lazard Frères is between \$705,753 and \$935,683. Prejudgment interest from the time of the filing of the lawsuit to the time of the trial (5% for 3.94 years) is between \$138,963 and \$184,236. Total damages plus prejudgment interest is between \$844,716 and \$1,119,919.

10. Total Damages under Scenario 2 range from **\$2,380,258 to \$2,655,461**, which includes benefit of the bargain damages (plus prejudgment interest) between \$844,716 and

¹ Plaintiff's Third Supplemental Answers and Objections to First set of Interrogatories of Defendants *Kroenke Sports & Entertainment, LLC* and *Outdoor Channel Holdings, Inc.*, p. 2.

² Plaintiff's Third Supplemental Answers and Objections to First set of Interrogatories of Defendants *Kroenke Sports & Entertainment, LLC* and *Outdoor Channel Holdings, Inc.*, p. 3.

\$1,119,919, lost compensation (plus prejudgment interest) of \$1,520,434 and legal expenses (plus prejudgment interest) of \$15,108. I have described the lower and upper range of these damages as Scenario 2A and 2B, respectively.

11. Scenario 3 benefit of the bargain losses are \$397,277. This assumes that the price of the proposed terms of the sale set forth in the term sheet of the Aerial Camera assets is the value. Prejudgment interest from the time of the filing of the lawsuit to the time of the trial (5% for 3.94 years) is \$78,224 and total damages plus prejudgment interest is \$475,501. My opinion that the \$475,501 be construed as a floor on the value of the Aerial Camera Business is also supported by the fact that Mr. Stan Kroenke elected not to sell the Aerial Camera Business even though he was being advised that it was a weak business and should be sold.

12. Total Damages under Scenario 3 are: **\$2,011,043**, which includes benefit of the bargain damages (plus prejudgment interest) of \$475,501, lost compensation (plus prejudgment interest) of \$1,520,434 and expenses (plus prejudgment interest) of \$15,108.

TABLE 1
SALOMON SCENARIO 1

Total Benefit of the Bargain Damages (\$)		1,023,808.88
Prejudgment @ 5% (\$)		201,587.97
Total (\$)		1,225,386.85
Lost Wages Plus Interest (\$)		1,520,433.71
Expenses Plus PJ interest (\$)		15,108.36
Total (\$)		2,760,928.92

TABLE 2
SALOMON SCENARIO 2A

Total Benefit of the Bargain Damages (\$)		705,753.12
Prejudgment @ 5% (\$)		138,962.72
Total (\$)		844,715.91
Lost Wages Plus Interest (\$)		1,520,433.71
Expenses Plus PJ interest (\$)		15,108.36
Total (\$)		2,380,257.98

TABLE 3
SALOMON SCENARIO 2B

Total Benefit of the Bargain Damages (\$)		935,683.02
Prejudgment @ 5% (\$)		184,235.99
Total (\$)		1,119,917.01
Lost Wages Plus Interest (\$)		1,520,433.71
Expenses Plus PJ interest (\$)		15,108.36
Total (\$)		2,655,459.08

TABLE 4
SALOMON SCENARIO 3

Total Benefit of the Bargain Damages (\$)		397,277.00
Prejudgment @ 5% (\$)		78,224.00
Total (\$)		475,501
Lost Wages Plus Interest (\$)		1,520,433.71
Expenses Plus PJ interest (\$)		15,108.36
Total (\$)		2,011,043.00

13. Disgorgement of profits of Outdoor Channel Holdings LLC. Outdoor benefitted from the competitive bidding when Outdoor accepted KSE bids that included the sale of the Aerial Camera Business. Absent the acceptance of the KSE bids, Outdoor's shareholders would have likely approved the sale to InterMedia for \$8.00 a share. Instead, the price was bid up to \$10.25 per share. The \$2.25 per share gain in price times 25.84 million, the number of outstanding shares of Outdoor stock resulted in a gain of \$58.14 million. With prejudgment interest of \$11.45 million, the total gain is **\$69.59 million**.

14. Disgorgement of KSE profits. I would measure the gain to KSE as the difference between the value of Outdoor to KSE and the price paid by KSE for Outdoor. However, I have not found information regarding KSE's assessment of Outdoor's value or the value of synergies expected by Outdoor.

D. *Material Relied Upon*

15. In the course of my work, I was provided with access to and have incorporated into my analyses contemporaneous business records, communications, and studies generated by the Defendants that were useful in my understanding of the facts of the case and in forming my opinions. I also have researched publicly available information. I also was provided with, and have reviewed and considered, transcripts of depositions and exhibits to those depositions. Counsel for Plaintiffs have provided me with access to records of documents produced by Defendants in this case. A detailed list of the materials and resources I reviewed or considered in the preparation of this report is contained in Appendix II.

II. BACKGROUND

A. *Background*

16. In this lawsuit, Plaintiff asserts that he, along with his partner PNC, negotiated a term sheet with defendant Outdoor Channel for the purchase of CableCam and SkyCam

(together referred to as the “Aerial Camera Business”). The term sheet contained a binding exclusivity clause precluding Outdoor Channel from taking a number of actions relating to the Aerial Camera Business, including negotiating with others concerning the business and selling the business, directly or indirectly, to anyone else. As a result, Plaintiff was deprived of the opportunity to purchase the Aerial Camera Business. Plaintiff contends that Outdoor Channel breached the term sheet in its handling of the negotiations for the sale of the Aerial Camera Business, its purported amendment of the term sheet with PNC behind Mr. Salomon’s back, and its ultimate decision to permit the sale of the Aerial Camera Business, to Defendant KSE following KSE’s offer to purchase all of Outdoor Channel, including the Aerial Camera Business. Plaintiff asserts causes of action for (1) breach of contract against Outdoor Channel, (2) tortious interference with existing contract and (3) tortious interference with prospective economic relations against KSE, (4) aiding and abetting breach of fiduciary duties against Outdoor Channel and KSE, (5) breach of fiduciary duty against PNC, and (6) unjust enrichment and (7) civil conspiracy against all defendants.

B. *Chronology of Events*

17. The Aerial Camera business was acquired by Outdoor on January 12, 2009 when Outdoor acquired the assets of Winnercomm, a production, development, and marketing of outdoor related programming company that own CableCam and SkyCam.³

18. In 2011 the Aerial Camera business was segregated from Winnercomm and was treated as a separate segment of Outdoor’s business.⁴

³ Outdoor Channel Holdings, Inc. 10-K (FYE March, 9, 2012), p. 4, *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312512107271/d294572d10k.htm>

⁴ Outdoor Channel Holdings, Inc. 10-Q (FYE November 9, 2012), p. 16, *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312512463463/d398759d10q.htm>.

19. In April 2012, Mr. Salomon and PNC executed a Non-Disclosure Agreement to permit PNC to evaluate the purchase of the Aerial Camera Business.⁵

20. In June 2012, Outdoor retained Noble Financial Capital Markets to explore strategic alternatives for the Aerial Camera Business.

21. In November 15, 2012, Outdoor Channel Holdings entered into a merger agreement with InterMedia Outdoor Holdings ("InterMedia"). According to the agreement, each share of Outdoor Channel issued and outstanding prior to the effective date will be converted into the right to receive either (1) \$8.00 in cash (2) one share of InterMedia common stock or (3) a combination of \$4.46 and 0.443 shares of InterMedia common stock. The InterMedia agreement contains a "fiduciary-out" provision that would allow Outdoor Channel to participate in unsolicited discussions related to a "Superior Proposal" by a third party as well as a breakup fee of \$6.5 million payable to InterMedia.

22. Concurrently with the execution of the Merger Agreement, Thomas H. Massie, Perry T. Massie and certain of their affiliated entities, the members of the Outdoor Channel board and the executive officers of Outdoor Channel representing approximately 41% of the voting outstanding stock, entered into a Support Agreements with Parent. Pursuant to this agreement the parties agreed, among other things, to vote their shares of Outdoor Channel common stock in favor of the adoption of the Merger Agreement and the approval of the Outdoor Channel Merger.⁶

⁵ *Nic Salomon v. Kroenke Sports & Entertainment, LLC, Outdoor Channel Holdings, Inc., and Pacific Northern Capital LLC*, Plaintiff's Second Amended Complaint (August 31, 2017) (hereinafter "Plaintiff's Second Amended Complaint"), p.7.

⁶ Outdoor Channel Holdings, Inc. 8-K (FYE November 16, 2012), Item 1.01 Entry into a Material Definitive Agreement, available at <https://www.sec.gov/Archives/edgar/data/760326/000119312512474248/d440083d8k.htm>.

23. My understanding is that the InterMedia Outdoor merger agreement excludes the Aerial Camera Business in its financial projections, and that this exclusion of Aerial Camera from the Outdoor projections is consistent with an expectation that InterMedia was not intending to interfere with the negotiations and contemplated sale of the Aerial Camera Business.⁷

24. On November 21, 2012, InterMedia filed a registration statement with the SEC related to the proposed merger with Outdoor Channel.⁸

25. On, November 27, 2012, InterMedia disclosed details of the terms of the Support Agreement.⁹

26. On January 2013, Mr. Salomon notified Outdoor of his intent to present an offer with PNC to buy the Aerial Camera Business.¹⁰

27. On February 26, 2013, Outdoor announced that Institutional Shareholder Services Inc. an independent U.S. proxy advisory firm, recommended that Outdoor Channel stockholders vote in favor of the proposed merger with InterMedia.¹¹

28. On February 27, 2013, Mr. Salomon, PNC and Outdoor executed a term sheet for the purchase of the assets of the Aerial Camera Business from Outdoor for a price of up to \$4.05 million, which included \$3.65 million in cash at closing and additional payments for ongoing royalties. The term sheet contains an exclusivity provision which precluded Outdoor, SkyCam

⁷ Outdoor Channel Holdings, Inc. 8-K (FYE November 16, 2012), *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312512474248/d440083d8k.htm>.

⁸ InterMedia Outdoor Holdings, Inc. S-4 (FYE November 21, 2012), *available at* <https://www.sec.gov/Archives/edgar/data/1562300/000119312512478810/d440728ds4.htm>.

⁹ Outdoor Channel Holdings, Inc. SC 13D/A EX-99.1 Form of Support Agreement (FYE November 27, 2012), *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312512482263/d445324dex991.htm>.

¹⁰ Plaintiff's Second Amended Complaint, p. 6.

¹¹ Outdoor Channel Holdings, Inc. 425 (FYE February 27, 2013), *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312513078245/d493273d425.htm>.

and CableCam from negotiating or agreeing to sell any equity interest in the Aerial Camera Business or any material part of the Aerial Camera Business to any party other than Mr. Salomon and PNC, or their designated purchaser. Within the binding exclusivity provision, the term sheet also provides for “monetary damages, both actual and consequential” in the event of a breach.¹²

29. On March 4, 2013, Outdoor Channel announces that it has received an unsolicited, unbinding proposal from Kroenke Sports & Entertainment, LLC to acquire all of Outdoor Channel’s outstanding shares in an all-cash price of \$8.75 per share.¹³ InterMedia sent a letter to the Board stating its belief its offer was more valuable than the KSE proposal because of an increase in the value of the equity portion of its offer. InterMedia cites an increase in value of the comparable companies in the Lazard Frères fairness opinion.¹⁴ It is my understanding that Mr. Salomon asserts that Outdoor’s General Counsel informed Mr. Salomon that it was in Outdoor’s position to disregard the term sheet because it was Outdoor’s interest to accept KSE’s offer to purchase the entire company.¹⁵

30. On March 7, 2013, Outdoor announces that the board has unanimously determined that the KSE proposal was a Superior Proposal.¹⁶

31. On March 10, 2013, Mr. Salomon provided PNC with a proposed equity structure for the purchaser.

¹² Plaintiff’s Second Amended Complaint, pp. 7-8.

¹³ Outdoor Channel Holdings, Inc. 8-K EX 99.2 (FYE March 4, 2013), *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312513089245/d495755dex992.htm>.

¹⁴ Outdoor Channel Holdings, Inc. 425, (FYE March 4, 2013), *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312513089246/d495755d8k.htm>.

¹⁵ Plaintiff’s Second Amended Complaint, p. 10.

¹⁶ Outdoor Channel Holdings, Inc. 425 (FYE March 7, 2013), p. 1, *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312513095853/d498630d425.htm>.

32. On March 13, 2013, Outdoor disclosed that it and KSE had entered into a definitive Agreement and Plan Merger pursuant to which KSE would acquire all the shares of Outdoor Channel for \$8.75 in cash. Prior to entering into the KSE Merger Agreement, Outdoor terminated the InterMedia Merger Agreement and paid a termination fee of \$6.5 million to InterMedia.¹⁷

33. It is my understanding that on March 21, 2013, PNC and Outdoor purported to amend the Term Sheet, without Mr. Salomon's knowledge or consent, to give effective control of the term sheet to KSE by means of a provision releasing Outdoor Channel from exclusivity obligations if KSE did not consent to a proposed transaction regarding the Aerial Camera Business.¹⁸

34. On March 28, 2013, Mr. Salomon emailed PNC to request PNC provide a proposed capitalization table.¹⁹

35. On March 28, 2013, Mr. Salomon learned of, and objected to the purported amendment to, the term sheet giving KSE de facto control over the sale of the Aerial Camera Business.²⁰ Outdoor CEO Hornish requested a "side letter Agreement and Amendment," which Mr. Salomon refused.

¹⁷ Outdoor Channel Holdings, Inc. 8-K (FYE March 13, 2013), p. 2, *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312513105366/d501922d8k.htm>.

¹⁸ Plaintiff's Second Amended Complaint Exhibit L

¹⁹ Plaintiff's Second Amended Complaint Exhibit M.

²⁰ Plaintiff's Second Amended Complaint, p. 13.

36. On April 11, 2013, Outdoor filed a definitive proxy statement, announcing that a special meeting of the stockholders would be held on May 8, 2013, where stockholders would vote upon a proposal to adopt the Kroenke Merger Agreement.²¹

37. On May 2, 2013, Outdoor and KSE entered into Amendment No.1 to the Kroenke Merger Agreement, pursuant to which KSE would acquire the shares for \$9.35 per share in cash. Outdoor disclosed that on April 30, 2013, InterMedia delivered a written proposal to Outdoor to acquire all shares of Outdoor Channel for \$9.15 per share.²²

38. On May 3, 2013, InterMedia delivered a written proposal to Outdoor Channel to acquire the shares of Outdoor for \$9.75 in cash.²³

39. On May 8, 2013, Outdoor and KSE entered into Amendment No. 2 to the Kroenke Merger Agreement, pursuant to which KSE would purchase all shares of Outdoor for \$10.25.²⁴

40. On May 17, 2013, Outdoor disclosed that it completed the merger with KSE.²⁵

III. BUSINESS ANALYSIS

A. *The Aerial Camera Business*

41. The Aerial Camera Business, which consists of CableCam and SkyCam were part of the 2009 Winnercom acquisition.²⁶ SkyCam and CableCam are similar companies that provide

²¹ Outdoor Channel Holdings, Inc. DEFM14A (FYE April 11, 2013), p. 3, *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312513150322/d505077ddefm14a.htm>.

²² Outdoor Channel Holdings, Inc. DEFA14A (FYE May 2, 2013), p. 3, *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312513196482/d531626ddefa14a.htm>.

²³ Outdoor Channel Holdings, Inc. DEFA14A (FYE May 6, 2013), p. 3, *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312513201776/d533118ddefa14a.htm>.

²⁴ Outdoor Channel Holdings, Inc. 8-K (FYE May 9, 2013), p. 2, *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312513210485/d536065d8k.htm>.

²⁵ Outdoor Channel Holdings, Inc. 8-K (FYE May 17, 2013), p. 2, *available at* <https://www.sec.gov/Archives/edgar/data/760326/000119312513226195/d540683d8k.htm>.

suspended aerial camera systems, primarily for sports and entertainment events. Other potential uses for the core technology include border and port security.²⁷ The SkyCam technology uses a proprietary fiber optic support cable and a 4-winch system. CableCam employs a 3-winch system that can carry heavier, higher quality cameras. In general, the SkyCam system is less expensive and easier to install.²⁸

42. The core Aerial Camera Business is capital intensive. Growth in the ability to service additional events requires the purchase of additional expensive equipment and development of new technologies. Suspended mobile aerial cameras are still an emerging technology, and early mover advantages are possible since barriers to entry may be increasing as companies acquire intellectual property, tie-up scarce specialized resources, establish a track record and enter into multi-year contracts with limited venues. SKYCAM had multiple patents²⁹ at the time of the breach and has successfully defended its intellectual property in court and has favorable verdicts in the Actioncam litigation.³⁰

43. In addition to the core business, SKYCAM was exploring ways to monetize its technology. For example, SKYCAM developed a second screen technology that would allow end users to view the live content from above a game on a laptop, tablet or handheld device. Such an application could generate targeted sponsorship revenue and unlike the core business it would not have growth tied to capital expenditures. SKYCAM had a patent pending for SKYCAM

²⁶ KSE/OC:056591.

²⁷ KSE/OC:056683.

²⁸ KSE/OC:056691.

²⁹ KSE/OC:056707.

³⁰ KSE/OC:056712.

acquisition and delivery to second screens.³¹ Although it is possible these opportunities could generate large amounts of revenue, I cannot estimate the value of this lost opportunity without additional information.

B. *Industry - Competition*

44. SKYCAM is the market leader and is dominant in the US market.³² Its largest competitor in the US market is Actioncam, which covers approximately one quarter the number of events as SKYCAM. Actioncam was the subject of the litigation won by SKYCAM for breach of contract, misappropriation of trade secrets and unfair competition. Other minor competitors include Spidercam and Flycam. Spidercam covers mostly soccer concerts and rugby and is the dominant firm in the European market.

IV. FINANCIAL ANALYSIS

A. *Historical Performance*

45. SKYCAM sales had increased from \$3.1 million in 2004 to \$12 million in 2012. To fuel this growth, SKYCAM invested \$8.6 million in new equipment. SKYCAM has had negative cash flow during this period, a trend that was expected to continue.

B. *Historical Financials*

³¹ KSE/OC:052707

³² KSE/OC:052706

TABLE 5
SKYCAM HISTORICAL FINANCIALS

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Revenue (Recurring) (\$ MM)	3.1	4.2	6.0	7.9	7.5	7.4	9.1	8.7	12.0
% growth		35.7%	42.2%	31.2%	-4.8%	-0.8%	22.2%	-4.4%	38.7%
Events	62	86	145	183	194	165	188	202	219
Gross Profit (Recurring) (\$MM)	2.0	2.7	3.8	5.2	4.7	4.2	4.9	4.4	4.7
% margin	64.9%	63.5%	63.7%	66.1%	62.7%	56.3%	54.0%	50.8%	39.3%
EBITDA (Recurring) (\$ MM)	1.3	1.5	1.3	1.8	1.3	0.7	1.5	1.2	1.4
% margin	40.7%	35.7%	21.3%	23.1%	17.8%	9.9%	16.1%	13.5%	11.6%
Capital Expenditures (\$ MM)	0.1	1.2	1.7	0.9	0.6	1.0	0.6	0.6	1.9

Notes: Excludes corporate overhead; Maintenance capex (included in Capital Expenditures) is estimated at \$600K per year.

C. *Projections*

46. There have been several projections reflecting various business plans produced in this litigation. I have chosen to use the projections prepared by Nic Salomon that was attached to the May 17, 2013 e-mail sent to David Gluck at KSE.³³ I believe these projections best reflect the business plan that would have been implemented absent the alleged breach of the terms of the term sheet and other wrongdoing alleged in this litigation.

TABLE 6
SKYCAM FINANCIAL PROJECTIONS

	Budget	5 Year Forecast				
SKYCAM Core Business Lines	2013E	2014E	2015E	2016E	2017E	2018E
Revenue (\$ MM)	12.7	15.5	22.0	35.0	42.4	52.2
% growth	5.7%	21.7%	42.1%	59.3%	21.3%	23.0%
Events	228	269	331	586	700	844
Gross Profit (\$ MM)	5.2	6.4	8.9	15.8	19.2	24.1
% margin	40.8%	41.5%	40.3%	45.1%	45.3%	46.2%
EBITDA (\$ MM)	1.2	1.5	3.4	9.2	12.2	16.5
% margin	9.2%	9.4%	15.4%	26.3%	28.6%	31.6%
Capital Expenditures (\$ MM)	0.7	1.5	8.5	3.5	4.9	7.9
Systems in Operation	17	20	26	48	59	78

Notes: Excluded corporate overhead; Maintenance Capex (included in Capital Expenditures) is estimated at \$600K per year.

D. *Lost Compensation*

47. As noted above, Plaintiff claims lost compensation totaling \$1,362,755 through February 4, 2019, the date of the start of the trial. This consists of lost salary and bonuses. I understand that Plaintiff's claim to this lost compensation is based on his assertion that but for the conduct of Defendants described in the Second Amended Complaint, Plaintiff would be in at least the same position as President of the Aerial Camera Business and would therefore be

³³ KSE/OC: 000414

earning at least the same base salary he was receiving at the time of his termination (i.e., \$252,881) and at least the same bonus he received for the calendar year 2013 (i.e., \$34,139). The calculation for this lost compensation is set forth in Plaintiff's Third Supplemental Answers and Objections to Defendants' First Set of Interrogatories. I have reviewed these calculations and they appear to be accurate based on the assumptions made therein. I performed a calculation of the prejudgment interest on these wages from the time the lawsuit was filed on February 27, 2015, and the prejudgment interest is \$157,679. Therefore, the total lost compensation damages are \$1,362,755.³⁴

E. *Legal Fees and Costs Incurred in Relation to the Proposed Transaction*

48. As noted above, I understand that Plaintiff incurred legal expenses and other costs paid in connection with the transaction to purchase the Aerial Camera Business through May of 2013 of \$12,622.³⁵ These damages are set forth in Plaintiff's Third Supplemental Answers and Objections to Defendants' First Set of Interrogatories. I have reviewed the underlying legal bills associated with this calculation and the number appears to be accurate. I performed a calculation of the prejudgment interest on these legal expenses and costs from the time the lawsuit was filed on February 27, 2015, and the prejudgment interest is \$2,486. Therefore, the total lost compensation damages for legal fees and costs incurred in relation to the proposed transaction are \$15,108.

³⁴ Plaintiff's Third Supplemental Answers and Objections to First set of Interrogatories of Defendants *Kroenke Sports & Entertainment, LLC* and *Outdoor Channel Holdings, Inc.*, p. 2.

³⁵ Plaintiff's Third Supplemental Answers and Objections to First set of Interrogatories of Defendants *Kroenke Sports & Entertainment, LLC* and *Outdoor Channel Holdings, Inc.*, p. 3.

F. *Benefit of the Bargain Losses*

49. One method of measuring losses to Mr. Salomon is to determine his benefit of the bargain damages. This would be an element of Mr. Salomon's economic damages, including the "monetary damages, both actual and consequential" referenced in the term sheet. The purpose of this measure of damages is to restore Mr. Salomon as the injured party to the economic position he would have been in had the contract been performed, or had it not been interfered with. I have been instructed by counsel that benefit of the bargain damages under Texas law are calculated by subtracting the value received by the non-breaching party from the value the party expected to receive when the contract was made. Because the value received by Mr. Salomon is zero in that he was denied the opportunity to participate in the purchase of the Aerial Camera Business and thus received no value, Mr. Salomon's benefit of the bargain losses would be measured as the value he would have received—meaning the value of the Aerial Camera Business—had the purchase been completed and had he then become a part owner of the business with PNC. In valuing the Aerial Camera Business, the present value of lost cash flows can be synonymous with lost value, since the value of a firm is considered to be the present value of expected cash flows.

i. *Scenario 1: Valuation of Aerial Camera Business Based on Projected Cash Flows*

50. Scenario 1 is a valuation of the projections made by management in the normal course of business around the time of the acquisition. Below I explain the various methods that are typically used for this purpose, why I chose the methods used and how key parameters used in the valuation were derived. In scenario 1, I concluded that the value of the Aerial Camera Business was \$9.75 million.

51. There are various methods of valuing a business. The business valuation discipline recognizes three general methodologies to arrive at an estimate of value of a business enterprise - the Capital Market method, the Income Method and the Cost Method. These methodologies, although separate and distinct, are commonly used jointly to corroborate findings and support conclusions. I have used only the Income Method to determine the value of the Aerial Camera Business. I include the results of Capital Market Method for illustration only as I am not convinced that the price to EBITDA ratio for the Entertainment Tech companies is sufficiently comparable to the unique business model of SKYCAM. I do not believe the Cost Method would provide a useful indication of value.

52. The Income Method requires that the earning capacity of the subject company be investigated and the resultant indicator of expected earning capacity, whether it be derived from past, current or projected earnings streams, be discounted at a rate sufficient to satisfy the investment and business risk of ownership. The application of this approach is enhanced when sufficient earnings history is available and relevant to the entity's future, in order to provide a clear indication of expected future performance. The Discounted Cash Flow (DCF) method is a direct application of the universal valuation definition; the value of a security is equal to the present value of expected cash flows. If the cash flows and discount rate were known then the value of the security would be a mathematical identity.

53. The Capital Market Method is predicated on the theory that the market value of a closely held company can be estimated based on prices investors pay for the stocks of similar publicly traded companies. In this method, we compare market value with other measures of financial performance or metrics. The investment market's valuation of these similar companies provides a guide for determining the range from which the appropriate market multiples should

be selected, and applies this range to the subject entity's relevant metric (such as different measures of earnings, cash flow or revenue). The Market Multiple Approach is useful when prices of similar comparable companies can be observed.

54. The Cost Method considers the assets and liabilities of the subject entity where appraised values are substituted for book values and the estimated liquidation value is the net value of assets realizable through sales of individual business assets. It does not consider earnings, goodwill or going concern values because it is presumed that the business enterprise will no longer be a going concern. Estimated liquidation value is applicable when the underlying assets are worth more if the business is terminated and the assets are sold individually, rather than as the underlying parts of a going concern. Because the Aerial Camera Business has intangible value, I have not used the Cost Method. Instead, I have utilized the Income (DCF) and Capital Market Methods in my determination of the present value of its equity.

55. These approaches can result in values at either the enterprise level or equity level. Enterprise value is for an entire firm and includes the market value of both its equity and interest-bearing debt, while equity value is a measure of value for the common shareholders' claim on the entire firm. In the case of the Aerial Camera business, there is no distinction between enterprise value and equity value because the company has no interest-bearing debt. Using the DCF method and considering the Capital Market Methods I compute enterprise value to arrive at the equity value.

56. The Discounted Cash Flow Method ("DCF") is based upon the premise that the value of future benefits can be derived from the present worth of these future benefits through the ownership of the subject property. In this method, the terms "income" or "profits" are used in a broad sense encompassing all monetary benefits to investors. A rate of return is used to convert

a series of future income amounts into present value. The key elements comprising the income approach are:

- the stream of benefits the owner of the assets expects to receive;
- the timing of the receipt of these benefits; and
- the risk borne by the owner.

57. **The Benefit Stream and Timing:** The future benefits can be characterized in terms of future cash flows. The available cash flow of an entire firm is the operating income that can be distributed, once the operational needs of a firm, prior to financing costs, have been met. The present worth of future benefits can be determined on a single-period or multi-period basis. A common methodology employed is a two-stage model comprising a series of cash flows (typically three to five years or over a forecast period provided by the Company's management) and a terminal on-going cash flow.

58. **Risk:** Risk is generally defined as the uncertainty regarding the expected rate of return from an investment. The financial principle that underlies this concept is opportunity cost, which is the return that could be obtained by investing in other assets with similar levels of uncertainty. In summary, DCF is a well-accepted valuation methodology based on the income approach and is widely used and accepted by valuation professionals. The value for an enterprise is based on projected cash flows, utilizing a discount factor to adjust all future cash flows to their present value which compensates investors for the risk associated with receiving those cash flows.

a. *The Benefit Stream: Cash Flows*

59. To employ the DCF method, we must first calculate the business's free cash flow.

Free cash flow is cash flow generated by the business before debt servicing charges that is in excess of the amount needed for reinvestment purposes. It is measured as

$$\text{Free Cash Flow} = \text{Net Operating Profits After Taxes} - \text{Change in Capital}$$

60. To estimate the free cash flow of Aerial Camera business, I used the forecast of EBITDA and subtracted cash operating taxes, depreciation to calculate after-tax operating profits before subtracting the net change in capital. Under this method, the cash flow is available to all claimants of capital and therefore is a measure of the value of the operations of the enterprise.

61. In applying the Discounted Cash Flow methodology, I used management's forecast that were developed in the normal course of business and were provided to financial institutions outside of the firm.

TABLE 7
EXPANDED FORECAST WITH OPERATING TAX RATE^{/1} = 20.67%

	2013	2014	2015	2016	2017	2018
Revenue (\$ MM) ^{/2}	12.70	15.50	22.00	35.00	42.40	52.20
EBITDA (\$ MM) ^{/2}	1.20	1.50	3.40	9.20	12.20	16.50
Depreciation (\$ MM) ^{/3}	0.91	1.04	2.77	2.94	3.39	4.44
Pre-tax Operating Profit (\$ MM)	0.29	0.46	0.63	6.26	8.81	12.06
Taxes @ 20.67% (\$ MM)	0.06	0.09	0.13	1.29	1.82	2.49
NOPAT (\$ MM)	0.23	0.36	0.50	4.97	6.99	9.57
Beginning Capital (\$ MM)	5.71	5.65	6.69	13.77	17.04	20.09
Beginning WC (\$ MM) ^{/4}	2.50	2.64	3.23	4.58	7.29	8.83
Change in WC (\$ MM) ^{/5}	0.15	0.58	1.35	2.71	1.54	2.04
Ending WC (\$ MM) ^{/5}	2.64	3.23	4.58	7.29	8.83	10.87
Beg PPE (\$ MM) ^{/4}	3.21	3.00	3.46	9.19	9.75	11.26
Capital investment (\$ MM) ^{/6}	0.70	1.50	8.50	3.50	4.90	7.90
Depreciation (\$ MM)	0.91	1.04	2.77	2.94	3.39	4.44
Ending PPE (\$ MM)	3.00	3.46	9.19	9.75	11.26	14.73

Ending Capital (\$ MM)	5.65	6.69	13.77	17.04	20.09	25.60
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Note:

^{/1} Effective tax rate for profitable companies, entertainment services industry January 1, 2013, "Damodaran Online," *NYU Stern School of Business*, available at <http://pages.stern.nyu.edu/~adamodar/>.

^{/2} KSE/OC:052707.

^{/3} Estimated using straight line depreciation using the implied historical average life of 4.32 years.

^{/4} January 31, 2013 Outdoor Holdings and subsidiaries Consolidated Financial Sheets Bates: KSE/OC:052479.

^{/5} Working capital based on the ratio of sales to working capital KSE/OC:052479.

TABLE 8
EXPANDED FORECAST WITH OPERATING TAX RATE¹ = 40.00%

	2013	2014	2015	2016	2017	2018
Revenue (\$ MM) ²	12.70	15.50	22.00	35.00	42.40	52.20
EBITDA (\$ MM) ²	1.20	1.50	3.40	9.20	12.20	16.50
Depreciation (\$ MM) ³	0.91	1.04	2.77	2.94	3.39	4.44
Pre-tax Operating Profit (\$ MM)	0.29	0.46	0.63	6.26	8.81	12.06
Taxes @ 40%% (\$ MM)	0.12	0.18	0.25	2.50	3.52	4.83
NOPAT (\$ MM)	0.18	0.27	0.38	3.76	5.28	7.24
Beginning Capital (\$ MM)	5.71	5.65	6.69	13.77	17.04	20.09
Beginning WC (\$ MM) ⁴	2.50	2.64	3.23	4.58	7.29	8.83
Change in WC (\$ MM) ⁵	0.15	0.58	1.35	2.71	1.54	2.04
Ending WC (\$ MM) ⁵	2.64	3.23	4.58	7.29	8.83	10.87
Beg PPE (\$ MM) ⁴	3.21	3.00	3.46	9.19	9.75	11.26
Capital investment (\$ MM) ⁶	0.70	1.50	8.50	3.50	4.90	7.90
Depreciation (\$ MM)	0.91	1.04	2.77	2.94	3.39	4.44
Ending PPE (\$ MM)	3.00	3.46	9.19	9.75	11.26	14.73
Ending Capital (\$ MM)	5.65	6.69	13.77	17.04	20.09	25.60

Notes:

¹ Effective tax rate for profitable companies, entertainment services industry January 1, 2013, "Damodaran Online," NYU Stern School of Business, available at <http://pages.stern.nyu.edu/~adamodar/>.

² KSE/OC:052707

³ Estimated using straight line depreciation using the implied historical average life of 4.32 years.

⁴ January 31, 2013 Outdoor Holdings and subsidiaries Consolidated Financial Sheets Bates: KSE/OC:052479.

⁵ Working capital based on the ratio of sales to working capital KSE/OC:052479.

62. **Weighted Average Cost of Capital in Risk:** The appropriate rate to use in discounting corporate free cash flows is known as the Weighted Average Cost of Capital ("WACC"). As its name implies, the WACC combines the after tax cost of debt and equity into a weighted average overall cost of capital. The weights are based on the proportion of the firm's capital structure accounted for by each source of capital in the company's target capital structure. The WACC is used to discount the corporate free cash flows, ignoring financing charges such as interest payments. It explicitly takes into account the different financing sources employed by the firm and their costs. This approach is based on the notion that for an investment to be acceptable to its investors, it must generate a stream of returns sufficient to compensate the suppliers of

capital in proportion to the amount and cost of the capital supplied by each. This minimum return is the cost of capital for the business. In general, the WACC is computed as:

$$WACC = K_E(\%E) + K_D(1 - t)(\%D)$$

Where:

K_E = Cost of Equity

K_D = Cost of Debt

$\%D$ = Target Percent Total Debt

$\%E$ = Target Percent Total Equity

t = Tax Rate

Where:

$$K_E = r_f + \beta_e(r_m - r_f) + SS_p$$

β_e = the equity beta coefficient, measured as σ_{em}/σ_m^2 , where σ_{em} stands for the covariance between returns on equity and returns on the market, and σ_m^2 is the variance of returns on the market portfolio

r_m = required rate of return on the market portfolio, the market is typically defined as the S&P 500

r_f = risk-free interest rate, usually measured as the yield to maturity on a U.S. Treasury bond in order to match the maturity of the investment with the maturity of the bond

SS_p = "small stock" liquidity premium, and adjustment to reflect the difference in returns observed between companies of different size; presumably a reflection of the relatively higher transaction costs incurred by smaller companies.

b. *The Cost of Equity*

63. I applied the Capital Asset Pricing Model (CAPM) to The Aerial camera business, yielding an estimated cost of equity capital (K_E) of 15.01% as of March 5th 2013.

64. **Risk-Free Rate:** The risk-free rate (r_f) is estimated as the yield on a long-term U.S. Treasury security. As such, I used the yield on ten (10) year Treasury bonds as of March 5, 2013. The observed rate was 2.72%.

65. **Beta:** To estimate SKYCAM's beta, I used the equity beta for the Entertainment Tech industry found in New York University's Damodaran database. Beta was calculated based on the weighted comparable companies' weekly covariance with the S&P 500 index over two and five years through 2012.³⁶

66. **Market Risk Premium:** The market risk premium is not susceptible to simple estimation as it is based on unobservable expectations. Often, this risk premium is be estimated using the historical differential between the actual return on the market portfolio and the risk-free Treasury bond rate (Treasury bond yields) over a time period from 1928 to present. Although such a method is commonly used to estimate the expected return on the market portfolio, I do not employ this approach because it lacks a theoretical basis and is populated with data from capital markets that do not resemble modern markets. An alternative approach is to estimate the implied market risk premium by calculating the return on equity that would cause expected cash flows to the holders of the S&P 500 index in the form of dividends and stock buybacks to equal the value. I used the 2012 implied market risk premium estimate from Damodaran of 5.78%.³⁷

³⁶ totalbeta12.xls, "Damodaran Online," NYU Stern School of Business, available at <http://pages.stern.nyu.edu/~adamodar/>.

³⁷ NYU Stern School of Business, "Damodaran Online", available at <http://pages.stern.nyu.edu/~adamodar/>.

67. **Small Stock Premium:** The final parameter for estimating cost of equity capital is the “small stock premium.” Like the market risk premium, this parameter cannot be obtained through simple estimation as it is based on unobservable expectations. The small company premium is based on the observation that the historical returns of small companies, measured by total returns were consistently higher than those of large companies. This terminology persists even though Amihud and Mendelson demonstrated that the “small stock effect” was an illusion caused by the higher transaction costs incurred by small companies.³⁸ In order to estimate the effect of transaction costs on the cost of capital for Aerial Camera Business, I calculated a small stock or transaction cost premium by calculating the transaction costs as a percentage of proceeds.

³⁸ Yakov Amihud and Hiam Mendelson (1989), ‘The Effects of Beta, Bid Ask Spread, Residual Risk and size on Stock Returns,’ *The Journal of Finance*.

TABLE 9
WACC

Risk Free Rate ^{/1}	2.72%
Beta ^{/2}	1.33
Expected Market Return ^{/3}	5.78%
Rf + (Beta)*Expected Market Return	10.41%
"Small Stock Premium" Transaction Costs as a % Proceeds ^{/4}	4.65%
WACC (all equity)	15.06%

Notes:

^{/1} 20-year T-bill Rate March 5, 2013 (U.S. Department of the Treasury).^{/2} Unleveraged Beta Entertainment Tech 2012, "Damodaran Online," NYU Stern School of Business, available at <http://pages.stern.nyu.edu/~adamodar/>.^{/3} Historical Implied Market Risk Premiums 2013, "Damodaran Online," NYU Stern School of Business, available at <http://pages.stern.nyu.edu/~adamodar/>.^{/4} Plaintiff's Second Amended Complaint Exhibit "H".

c. Valuation

68. In estimating the value of the Aerial Camera business using the income method, I employed two variations to value the projections. First, I discounted the free cash flow at the cost of capital. I assumed no additional value creation after that point and used the invested capital as the terminal value. Also, I employed an economic profit model. Similarly, I assumed no additional economic profit after the term of the forecast. I ran two scenarios, one with a standard 40% tax rate and one with the industry average effective tax rate of 20.69%. The value assuming a 40% tax rate was \$8.37 million and the value assuming the Entertainment Tech industry average tax rate 20.69% was \$11.13 million. I choose an average of values of \$9.75 million for the value of the core Aerial Camera Business.

TABLE 10
VALUATION 20.69% TAX RATE (WACC = 15.1%)

	2013	2014	2015	2016	2017	2018
NOPAT (\$ MM)	0.23	0.36	0.50	4.97	6.99	9.57
Beginning Capital (\$ MM)	5.71	5.65	6.69	13.77	17.04	20.09
Return on Capital (\$ MM)	4%	6%	7%	36%	41%	48%
Normal Profit (\$ MM)	0.86	0.85	1.01	2.07	2.57	3.03
Economic Profit (\$ MM)	-0.63	-0.49	-0.51	2.89	4.42	6.54
PV of Economic Profit (\$MM)	-0.54	-0.37	-0.33	1.65	2.19	2.82
Sum PV Economic Profit (\$ MM)	5.42					
Beginning Capital (\$ MM)	5.71					
PV Economic Profit (\$ MM)	5.42					
Value (\$ MM)	11.13					
NOPAT (\$ MM)	0.23	0.36	0.50	4.97	6.99	9.57
Ending Capital (\$ MM)	5.65	6.69	13.77	17.04	20.09	25.60
Change in Capital (\$ MM)	-0.06	1.04	7.08	3.27	3.05	5.51
Free Cash Flow (\$ MM)	0.29	-0.68	-6.58	1.70	3.94	4.07
PV FCF (\$ MM)	0.25	-0.51	-4.32	0.97	1.95	1.75
Sum PV FCF (\$ MM)	0.09					
PV Terminal Value (\$ MM)	11.03					
Value (\$ MM)	11.13					

TABLE 11
VALUATION 40% TAX RATE (WACC = 15.1%)

	2013	2014	2015	2016	2017	2018
NOPAT (\$ MM)	0.18	0.27	0.38	3.76	5.28	7.24
Beginning Capital (\$ MM)	5.71	5.65	6.69	13.77	17.04	20.09
Return on Capital (\$ MM)	3%	5%	6%	27%	31%	36%
Normal Profit (\$ MM)	0.86	0.85	1.01	2.08	2.57	3.03
Economic Profit (\$ MM)	-0.69	-0.58	-0.63	1.68	2.71	4.20
PV of Economic Profit (\$MM)	-0.60	-0.44	-0.41	0.96	1.34	1.81
Sum PV Economic Profit (\$ MM)	2.66					
Beginning Capital (\$ MM)	5.71					
PV Economic Profit (\$ MM)	2.66					
Value (\$ MM)	8.37					
NOPAT (\$ MM)	0.18	0.27	0.38	3.76	5.28	7.24
Ending Capital (\$ MM)	5.65	6.69	13.77	17.04	20.09	25.60
Change in Capital (\$ MM)	-0.06	1.04	7.08	3.27	3.05	5.51
Free Cash Flow (\$ MM)	0.24	-0.77	-6.71	0.49	2.24	1.73
PV FCF (\$ MM)	0.21	-0.58	-4.40	0.28	1.11	0.75
Sum PV FCF (\$ MM)	-2.64					
PV Terminal Value (\$ MM)	11.01					
Value (\$ MM)	8.37					

69. In order to determine the losses incurred by Mr. Salomon used the capitalization table exchanged between Mr. Salomon and PNC. The proposed structure provided Mr. Salomon with 8% of the initial stock and stock options with strike prices of 1X, 2X and 3X times the initial stock price. Based on my experience, I consider these terms to be reasonable and typical of the types of terms given to key management in private equity transactions. In order to allocate the share of the value attributable to Mr. Salomon, I used an iterative Black Scholes model.

TABLE 12
BLACK SCHOLES CALL PRICE SCENARIO 1

Underlying Price (\$)	Strike Price (\$) ¹	Risk Free Rate ²	Maturity	Volatility ³	Black Scholes Call Price (\$)
852.06	562.50	0.0077	5.00	0.49	466.47
852.06	1,125.00	0.0077	5.00	0.49	295.09
852.06	1,687.50	0.0077	5.00	0.49	203.61

Notes:

¹ Plaintiff's Second Amended Complaint.

² 5 Year treasury March 5, 2013 (U.S. Department of the Treasury).

³ Optionvar12.xls, "Damodaran Online," NYU Stern School of Business, available at <http://pages.stern.nyu.edu/~adamodar/>.

70. Applying the analysis above, we can come up with a total valuation of the Aerial Camera Business, including an allocation of the value of Mr. Salomon's shares of the business, along with an allocation of the value of other investors' shares. As shown below in Table 13, the valuation of Mr. Salomon's shares would be \$1,023,808.88. Under Scenario 1, this is the benefit of the bargain Mr. Salomon lost as a result of being deprived of the opportunity to participate in the purchase of the Aerial Camera Business. The prejudgment interest on this amount, based on the rate of 5 percent from the date the lawsuit was filed (February 27, 2015) is \$201,588. The total benefit of the bargain damages under Scenario 1 is thus \$1,225,397.

TABLE 13
ALLOCATION OF VALUE SCENARIO 1

Value Salomon Shares (\$)	870	681,648.00
Salomon Options 1X (\$)	639	238,459.00
Salomon Options 2X (\$)	284	58,663.86
Salomon Options 3X (\$)	316	45,038.02
Total Salomon (\$)		1,023,808.88
Founder Options 1X (\$)	1,279	477,291.17
Founder Options 2X (\$)	1,137	234,862.00
Founder Options 3X (\$)	1,263	180,009.56
Investor's Shares (\$)	10,000	7,838,952.00
Total (\$)		9,754,923.61

71. I also applied a market comparable approach using average multiples for the entertainment tech sector in 2012. I applied the EBITDA multiple of 7.97X to the 2012 EBITDA of \$1.4 million. This method yielded a value of \$11.16 million. I include this for illustration only, since the Aerial Camera Business is quite unique.

TABLE 14
EBITDA VALUE

EBITDA ^{/1}	1.4 MM
P/EBITDA ^{/2}	7.97
Value	11.16 MM

Notes:

¹ KSE/OC:052706

² VerbitDal12.xls, "Damodaran Online," NYU Stern School of Business, available at <http://pages.stern.nyu.edu/~adamodar/>.

ii. *Scenario 2: Valuation of Aerial Camera Business Based on Valuation Performed by Financial Advisor of Outdoor Channel*

72. Another reasonable basis for measuring what the value of the Aerial Camera Business was near the time of the alleged breach of the term sheet and other wrongdoing by Defendants is what Lazard Freres, the investment bank financial advisor to Defendant Outdoor in connection with the sale of Outdoor, deemed the value to be. This is what I will present as Scenario 2 (split as Scenario 2A and Scenario 2B).

73. There has been at least one other valuation around the same time period. A valuation done by Lazard Frères, the financial advisor for Outdoor Channel in connection with the sale of Outdoor Channel, for the transaction was performed as part of the valuation of Outdoor based on a different business plan and set of projections. The value was estimated to be between \$7 million and \$9 million.³⁹ More specifically, in connection with one of Intermedia's offers to purchase Outdoor and as part of the valuation of Outdoor with regards to that offer, Lazard Freres offered a valuation of the Aerial Camera Business that was based on a different business plan and set of projections. The value was estimated to be between \$7 million and \$9 million, and was apparently derived from a discounted cash flow analysis. The lower and upper range of these valuations are utilized for Scenario 2A and Scenario 2B damages, respectively. According to the filing, "[i]n performing its discounted cash flow analysis of aerial camera, Lazard calculated the estimated present value of the standalone unlevered, after-tax free cash flows that aerial camera was forecasted to generated during the fourth quarter of the fiscal year

³⁹ KSE/OC: 028443-028445.

ending December 31, 2012 through the full fiscal year December 31, 2017 utilizing financial forecasts and other estimates and data of aerial camera prepared by Outdoor Channel's management."⁴⁰ Because this assessment was reported in an SEC filing (i.e. a Proxy Statement), both Outdoor and Lazard had an incentive to ensure correct reporting and that a reliable analysis was performed. Further, the valuation was based on figures provided by Defendant Outdoor's own management. I thus have no reason to believe that Lazard's analysis was inaccurate, or based on a deficient methodology or set of assumptions. In fact, the upper range of Lazard's assessment is not significantly different from the valuation I came up with in Scenario 1.

74. As with Scenario 1, in order to allocate the share of the value attributable to Mr. Salomon for Scenarios 2A and 2B, I used an iterative Black Scholes model, as reflected in Tables 15 and 16.

TABLE 15
BLACK SCHOLES CALL PRICE SCENARIO 2A

Underlying Price (\$)	Strike Price (\$) ¹	Risk Free Rate ²	Maturity	Volatility ³	Black Scholes Call Price (\$)
627.54	562.50	0.0077	5.00	0.49	287.83
627.54	1,125.00	0.0077	5.00	0.49	165.56
627.54	1,687.50	0.0077	5.00	0.49	107.00

Notes:

¹ Plaintiff's Second Amended Complaint

² 5 Year treasury March 5, 2013 (U.S. Department of the Treasury)

³ Optionvar12.xls, "Damodaran Online," *NYU Stern School of Business*, available at <http://pages.stern.nyu.edu/~adamodar/>.

⁴⁰ KSE/OC: 028443-028445.

TABLE 16
BLACK SCHOLES CALL PRICE SCENARIO 2B

Underlying Price (\$)	Strike Price (\$) ¹	Risk Free Rate ²	Maturity	Volatility ³	Black Scholes Call Price (\$)
791.16	562.50	0.0077	5.00	0.49	416.33
791.16	1,125.00	0.0077	5.00	0.49	257.60
791.16	1,687.50	0.0077	5.00	0.49	175.03

Notes:

¹ Plaintiff's Second Amended Complaint

² 5 Year treasury March 5, 2013 (U.S. Department of the Treasury)

³ Optionvar12.xls, "Damodaran Online," NYU Stern School of Business, available at <http://pages.stern.nyu.edu/~adamodar/>.

75. Continuing with the analysis utilizing the Lazard analysis, I came up with an allocation of the value of Mr. Salomon's shares of the business, along with an allocation of the value of other investors' shares. As shown below in Tables 17 and 18 the valuation of Mr. Salomon's shares under Scenarios 2A and 2B would be \$705,753.12 and \$935,683.02, respectively. Therefore, under Scenario 2, this is the benefit of the bargain Mr. Salomon lost as a result of being deprived of the opportunity to participate in the purchase of the Aerial Camera Business. The prejudgment interest on these amounts, based on the rate of 5 percent from the date the lawsuit was filed (February 27, 2015) is \$138,963 and \$184,236. The total benefit of the bargain damages under Scenario 2A and 2B is thus \$844,716 and \$1,119,918.

TABLE 17
ALLOCATION OF VALUE SCENARIO 2A

Value Salomon Shares (\$)	870	502,032.32
Salomon Options 1X (\$)	639	147,138.76
Salomon Options 2X (\$)	284	32,912.54
Salomon Options 3X (\$)	316	23,669.50
Total Salomon (\$)		705,753.12
Founder Options 1X (\$)	1,279	294,507.79
Founder Options 2X (\$)	1,137	131,766.03
Founder Options 3X (\$)	1,263	94,603.11
Investor's Shares (\$)	10,000	5,773,371.68
Total (\$)		7,000,001.73

TABLE 18
ALLOCATION OF VALUE SCENARIO 2B

Value Salomon Shares (\$)	870	632,928.00
Salomon Options 1X (\$)	639	212,828.29
Salomon Options 2X (\$)	284	51,210.96
Salomon Options 3X (\$)	316	38,715.77
Total Salomon (\$)		935,683.02
Founder Options 1X (\$)	1,279	425,989.65
Founder Options 2X (\$)	1,137	205,024.16
Founder Options 3X (\$)	1,263	154,740.57
Investor's Shares (\$)	10,000	7,278,672.00
Total (\$)		9,000,109.40

iii. *Scenario 3: Valuation Based on Actual Price of Proposed Acquisition of Aerial Camera Business*

76. A third basis for measuring the value of the Aerial Camera Business at the time of the alleged breach and other wrongdoing is the most conservative one—namely, to assume that the value of the business is simply the price that was offered to purchase the business. This will be Scenario 3. This measure does not take into account the variables discussed above in connection with Scenarios 1 and 2 and, therefore, does not account for a participant in a transaction obtaining a discount on an asset that deviates from its actual intrinsic market value as possibly could have occurred here had Mr. Salomon and PNC been able to complete the transaction. However, the actual transaction price is defensible as a measure of valuation under the fundamental economic principle that an asset's value is based on the intersection of what a willing buyer is willing to pay for an asset and what a willing seller is willing to sell that asset for.

77. Here, we have the actual proposed transaction price for the purchase of the Aerial Camera Business by Mr. Salomon and PNC. According to the term sheet, the price for the Aerial

Camera Business was \$4.05 million. \$4.05 million would thus be the value of the Aerial Camera Business under Scenario 3.

78. Assuming this to be the case, in order to allocate the share of the value attributable to Mr. Salomon for Scenario 3, I used an iterative Black Scholes model.

79. As with Scenarios 1 and 2, I came up with an allocation of the value of Mr. Salomon's shares of the business, along with an allocation of the value of other investors' shares. As shown below in Table 19, the valuation of Mr. Salomon's shares under Scenario 3 would be \$397,277. Therefore, under Scenario 3, this is the benefit of the bargain Mr. Salomon lost as a result of being deprived of the opportunity to participate in the purchase of the Aerial Camera Business. The prejudgment interest on this amount, based on the rate of 5 percent from the date the lawsuit was filed (February 27, 2015) is \$78,224. The total benefit of the bargain damages under Scenario 3 is thus \$475,501.

TABLE 19
ALLOCATION OF VALUE SCENARIO 3

Value Salomon Shares (\$)	870	295,320
Salomon Options 1X (\$)	639	75,384
Salomon Options 2X (\$)	284	15,752
Salomon Options 3X (\$)	316	10,821
Total Salomon (\$)		\$397,277
Founder Options 1X (\$)	1,279	150,885
Founder Options 2X (\$)	1,137	63,062
Founder Options 3X (\$)	1,263	43,251
Investor's Shares (\$)	10,000	3,396,180
Total (\$)		4,050,654

80. My opinion that the \$475,501 be construed as a floor on the value of the Aerial Camera Business is also supported by the fact that Mr. Stan Kroenke, the chairman and ultimate owner of KSE and Outdoor Channel, elected not to sell the Aerial Camera Business even though he was apparently being advised that it was a weak business and should be sold. My opinion concerning the value of the Aerial Camera Business would benefit from additional information on this point from Mr. Kroenke concerning the reasons why he elected not to sell the business. I understand there is presently an attempt to depose Mr. Kroenke and that Defendants have filed a motion to prevent the deposition. If the deposition occurs, I will supplement my opinion if necessary to incorporate Mr. Kroenke's testimony.

G. *Disgorgement of Outdoor Channel Profits*

81. Outdoor had agreed to sell its stock to InterMedia for \$8 per share. This transaction was approved by the board, recommended by its financial advisor and a vote to approve the transaction by stockholders was scheduled. The Intermedia transaction would have respected the sale of the Aerial Camera Business. The contract is alleged to have been breached when Outdoor considered and accepted a competing offer by KSE that included an offer to buy the Aerial Camera Business despite the agreement by Outdoor in the term sheet not to consider such offers. Outdoor received considerable benefit by entertaining and accepting the competitive bidding that resulted from the KSE offers, the transaction price of the Outdoor stock increased from \$8.00 per share to \$10.25 per share. Outdoor's gain from its actions was \$2.25 per share, a benefit of \$58.14 million (25.84 million shares times \$2.25 gain per share). This analysis is reflected in Table 20.

TABLE 20
GAIN FROM COMPETITIVE BIDS

	Price (\$)	Shares	Total (\$)
Price Prior to Competitive Bid	8.00	25.84	206.71
Competitive Bid Price	10.25	25.84	264.85
Gain from Competitive Bid			58.14

H. Punitive Damages

82. In the event the jury determines that punitive damages are appropriate, I anticipate supplementing this opinion with additional opinions regarding Defendants' ability to pay and Defendants' financial conditions, assets, liabilities, available credit and indebtedness. I also anticipate offering an opinion concerning whether Outdoor Channel and KSE's respective financial condition enables each of them to pay and withstand a substantial punitive damage award. Because they are private companies, I will need to rely on discovery from Defendants. I understand that Plaintiff has requested documents relevant to this analysis from Defendants, but that Defendants objected to Plaintiff's request as overbroad and premature. I imagine that Defendants will be required to turn over these materials in the event the jury determines that punitive damages are appropriate. I would thus anticipate at that time supplementing this opinion with additional opinions regarding Defendants' ability to pay and Defendants' financial conditions, assets, liabilities, available credit, and indebtedness. However, my preliminary opinion is that Defendants KSE would, in fact, be able to pay and withstand a substantial punitive damage award in excess of \$100 million. I base this on the following description of KSE from its own website: "Denver-based Kroenke Sports & Entertainment (KSE) is one of the world's leading ownership, entertainment and management groups. As owners and operators of Pepsi Center, the Paramount Theatre, Dick's Sporting Goods Park, the Colorado Avalanche (NHL), Denver Nuggets (NBA), Colorado Mammoth (NLL) and Colorado Rapids (MLS), KSE's

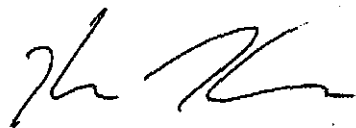
sports and entertainment assets are second to none. Additional properties under KSE's umbrella include Altitude Sports & Entertainment, a 24-hour regional television network; Altitude Authentics, the company's official retail provider; and Altitude Tickets, the official ticketing provider for KSE teams and venues."⁴¹ Forbes places a value on the Denver Nuggets alone at \$1.125 Billion based on revenues of \$202 Million and operating income of \$49 Million.⁴²

83. I also may have rebuttal opinions of experts retained by defendants and I reserve the right to supplement this expert report and/or the opinions stated herein. In addition, my calculations are capable of being adjusted in the event one or more of the variables included in the analyses set forth above have to be changed for any reason.

⁴¹ Pepsi Center, "About KSE," *available at* <https://www.pepsicenter.com/kse/company/about-kse/>.

⁴² Forbes, "The Business Of Basketball," *available at* <https://www.forbes.com/nba-valuations/list/#tab:overall>.

September 14, 2018

A handwritten signature in black ink, appearing to read 'Kevin Kreitzman', written over a horizontal line.

Kevin Kreitzman

APPENDIX I: RESUME

KEVIN KREITZMAN

Kevin Kreitzman has been a director at Berkeley research Group from 2010 through the present time. He has over 25 years of financial-economic consulting experience in both litigation and non-litigation environments. He has testified in both federal and state court and before the Department of Justice. He has conducted damages studies for litigation matters, including insurance sales practices, "vanishing premiums," fraud, mergers and acquisitions, 10(b) 5 class actions, mutual funds, distributor termination, environmental, insurance coverage, solvency, fraudulent conveyance, breach of contract, patent infringement, trade secrets, professional malpractice, sales practices, breach of fiduciary responsibility, tax liabilities, Employee Stock Ownership Plans (ESOPs), antitrust, and intellectual property. Mr. Kreitzman has management experience in investment banking, investment management and insurance. He has conducted valuations of businesses, intellectual property, securities, and options, and has structured transactions using financial engineering tools.

EMPLOYMENT HISTORY

ERS Group

- Principal (March 2005 to 2009)

Provided expert witness testimony in both state and federal courts, arbitration proceedings and before the Department of Justice. Provided analyses related to securities fraud, antitrust issues, intellectual property disputes, professional malpractice, derivative securities and investment funds. Testified in Bankruptcy Court regarding solvency and fraudulent conveyance and estimated the value of asbestos liabilities that would have been known at different points in time.

KPMG LLP

- Director KPMG Forensics/Economic and Valuation Services (January 2000- March 2005)

Provided expert witness testimony in deposition and trial, led forensic investigations of alleged accounting and other fraud, evaluated investment fund performance and compliance, performed royalty audits, and provided and examined contract compliance for insurance companies and other financial institutions. Served on the business valuation technical committee which developed internal valuation guidelines and set policies and standards for methodologies used or accepted by KPMG LLP.

LECG

- Senior Economist (November 1997 – January 2000)

Provided litigation support and consulting services to law firms and companies engaged in a variety of complex litigation, including insurance sales practices and damages issues. Developed an economic profit- based financial performance measurement model for a large nonprofit organization

San Francisco Telecom Inc.

•CFO (January 1995 –March 1997)

Served as CFO of San Francisco Telecom until its acquisition by Level One Communications. He also implemented an ISO 9000 quality control program and obtained ISO 9000 certification and designed and tested an integrated financial and cost accounting system for SFT and Level One Communications using Oracle applications software.

Focal Financial Consulting Inc.

•Vice President (1989 November 1997)

Provided litigation support services to attorneys, business valuations to companies and ESOP trustees, and consulting services to fiduciaries and trustees.

Kreitzman & Co., Inc

•President (1986 - 1989)

Developed proprietary models for credit enhancement using financial engineering tools. Obtained venture financing and entered into joint venture agreements with various established financial consulting firms to market structures and sell securities through the major investment banks. Worked with life insurance companies to design life insurance policies.

Kelso & Company

•Vice President, Kelso Insurance Services (1995 - 1996)

Evaluated the feasibility of proposed ESOP LBO transactions, developed actuarial models to estimate potential recoveries from defined benefit pension plan termination, and designed cash flow based programs to create internal secondary markets for ESOP stock in privately held corporations. Provided communication programs for ESOP-LBO related transactions to management and employees of client companies.

Callan Associates, Inc.

•Investment Portfolio Analyst (1985)

Developed an asset allocation paradigm for security and manager selection. Evaluated fund manager performance, modeled transaction costs to include soft dollar payments and trading efficiency, and estimated the cost of divesting South African investments for a large public pension fund.

MGIC Investment Corporation

•Assistant Portfolio Manager (1983 -1984)

Analyzed and selected hedged common stock and call option positions, designed models for financial market research, and provided financial analysis for the management buyout of MGIC.

EDUCATION

MBA, University of Wisconsin – Milwaukee, 1982

B.S. Medical Technology, University of Wisconsin – Milwaukee, 1978

SPECIALIZATION

Analysis of damages arising in securities, commercial and intellectual property disputes; class certification issues; valuation of companies, interests, credit guarantees, contract provisions, liquidity, marketability, control, limited partnerships, financial institutions, commercial properties, derivative and convertible securities; analysis of investment fund performance and compliance with stated objectives, rules and contractual agreements; analysis of accounting, financial economic and capital market data; analysis of solvency, investigation of accounting fraud and Employee Stock Ownership Plans (ESOPs).

Industry Experience includes investment banking, hotels, computer hardware and software, biotechnology, semiconductors, telecommunications, financial institutions, insurance, pension funds, medical products, real estate and energy.

PRESENTATIONS AND PROFESSIONAL MEETINGS

“Evaluating and Valuing Intellectual Property,” Practicing Law Institute, 2003.

“Deposition Training Seminar” San Francisco Bar Association, 2003, 2005.

“Expert Examination Seminar” San Francisco Bar Association, 2004

“Damages Estimates in Securities Litigation,” Portland Bar Association 2002.

PREVIOUS ACADEMIC APPOINTMENTS

University of California Berkeley “Business Valuation” and “Corporate Finance.” Seminar:
“Estimating Damages in Litigation.”

San Francisco State University

•Lecturer – “Corporate Finance”

University of San Francisco

• Lecturer – “Investment Management & Securities Analysis”

St. Mary’s College, Moraga CA

• Lecturer – “Corporate Finance” and “Financial Accounting”

Armstrong University

• Associate Professor - “Corporate Finance,” “Capital Markets” and “Insurance & Risk Management”

Golden Gate University

• Lecturer – “Corporate Finance”

University of Wisconsin - Milwaukee

• Adjunct Professor – “Business Statistics” and “Mathematical Modeling”

APPENDIX II: DOCUMENTS RELIED UPON

Academic Articles & Books (non-exhaustive)

Yakov Amihud and Hiam Mendelson (1989), 'The Effects of Beta, Bid Ask Spread, Residual Risk and size on Stock Returns,' *The Journal of Finance*

Bates Numbered Documents and Other Confidential Documents

Copy of optvar12.xls

Copy of taxrate12.xls

Copy of totalbeta12.xls

Copy of vebitda12.xls

histimpl.xls

indname.xls

KSE/OC:000413

KSE/OC:000414

KSE/OC:000415

KSE/OC:000416

KSE/OC:028348

KSE/OC:028349

KSE/OC:028350

KSE/OC:028351

KSE/OC:028352

KSE/OC:028353

KSE/OC:028354

KSE/OC:028355

KSE/OC:028356

KSE/OC:028436

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KSE/OC:028444
KSE/OC:028445
KSE/OC:029024-412
KSE/OC:029657
KSE/OC:029658
KSE/OC:030645
KSE/OC:030646
KSE/OC:038563
KSE/OC:038564
KSE/OC:038565
KSE/OC:043867-875
KSE/OC:044055
KSE/OC:044194
KSE/OC:044362
KSE/OC:044945
KSE/OC:045487
KSE/OC:046171
KSE/OC:046295
KSE/OC:046409
KSE/OC:046525
KSE/OC:046617
KSE/OC:046858
KSE/OC:047050
KSE/OC:047247
KSE/OC:047545
KSE/OC:047705
KSE/OC:047849
KSE/OC:048000

KSE/OC:048139
KSE/OC:048266
KSE/OC:048439
KSE/OC:048613
KSE/OC:048799
KSE/OC:048956
KSE/OC:049129
KSE/OC:049353
KSE/OC:049551
KSE/OC:049679
KSE/OC:049781
KSE/OC:049982
KSE/OC:050157
KSE/OC:050348
KSE/OC:050536
KSE/OC:050793
KSE/OC:050999
KSE/OC:051183
KSE/OC:051428
KSE/OC:051826
KSE/OC:052105
KSE/OC:052404
KSE/OC:052472-480
KSE/OC:052706
KSE/OC:052707
KSE/OC:053255
KSE/OC:053347
KSE/OC:053443
KSE/OC:053444
KSE/OC:053647

KSE/OC:053799

KSE/OC:053918

KSE/OC:054069

KSE/OC:054195

KSE/OC:054338

KSE/OC:054518

KSE/OC:054654

KSE/OC:054802

KSE/OC:055039

KSE/OC:055250

KSE/OC:055455

KSE/OC:055708

KSE/OC:056589

KSE/OC:056591

KSE/OC:056683

KSE/OC:056691

KSE/OC:056707

KSE/OC:056712

KSE/OC:057075

KSE/OC:057116

KSE/OC:057772

KSE/OC:058029

KSE/OC:058772

KSE/OC:059123

KSE/OC:059954

KSE/OC:060373

SALOMON500000-500046

Depositions and Exhibits

30(b)(6) Deposition Exhibit 361

30(b)(6) Deposition Exhibit 362

30(b)(6) Deposition Exhibit 363

30(b)(6) Deposition Exhibit 364

30(b)(6) Deposition Exhibit 365

30(b)(6) Deposition Exhibit 366

Amended Deposition Notice of KSE

Deposition Notice of Defendant Outdoor Channel Holdings, Inc.

Exhibit 300

Exhibit 301

Exhibit 302

Exhibit 303

Exhibit 304

Exhibit 305

Exhibit 306

Exhibit 307

Exhibit 308

Exhibit 309

Exhibit 310

Exhibit 311

Exhibit 312

Exhibit 313

Exhibit 314

Exhibit 315

Exhibit 316

Exhibit 317

Exhibit 318

Exhibit 319

Exhibit 320

Exhibit 321

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Exhibit 346

Exhibit 347

Exhibit 348

Exhibit 349

Exhibit 350

Exhibit 351

Exhibit 352

Exhibit 353

Exhibit 354

Exhibit 355

Exhibit 356

Exhibit 357

Exhibit 358

Exhibit 359

Exhibit 360

Pleadings, Submissions, Complaints, and Orders

Nic Salomon v. Kroenke Sports & Entertainment, LLC, Outdoor Channel Holdings, Inc., and Pacific Northern Capital LLC, Plaintiff's Second Amended Complaint (August 31, 2017)

Outdoor's Response to Plaintiff's RFA No.1

Plaintiff's Third Supplemental Answers and Objections to First set of Interrogatories of Defendants *Kroenke Sports & Entertainment, LLC* and *Outdoor Channel Holdings, Inc.*

Transcript of S. Long, KSE LLC (September 5, 2018)

Other

Forbes, "The Business Of Basketball," available at <https://www.forbes.com/nba-valuations/list/#tab:overall>

InterMedia Outdoor Holdings, Inc. S-4 (FYE November 21, 2012), available at <https://www.sec.gov/Archives/edgar/data/1562300/000119312512478810/d440728ds4.htm>

NYU Stern School of Business, "Damodaran Online", available at <http://pages.stern.nyu.edu/~adamodar/>

Outdoor Channel Holdings, Inc. 10-K (FYE March, 9, 2012), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312512107271/d294572d10k.htm>

Outdoor Channel Holdings, Inc. 10-Q (FYE November 9, 2012), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312512463463/d398759d10q.htm>

Outdoor Channel Holdings, Inc. 425 (FYE February 27, 2013), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312513078245/d493273d425.htm>

Outdoor Channel Holdings, Inc. 425 (FYE March 4, 2013), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312513089246/d495755d8k.htm>

Outdoor Channel Holdings, Inc. 425 (FYE March 7, 2013), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312513095853/d498630d425.htm>

Outdoor Channel Holdings, Inc. 8-K (FYE May 17, 2013), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312513226195/d540683d8k.htm>

Outdoor Channel Holdings, Inc. 8-K (FYE March 13, 2013), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312513105366/d501922d8k.htm>

Outdoor Channel Holdings, Inc. 8-K (FYE May 9, 2013), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312513210485/d536065d8k.htm>

Outdoor Channel Holdings, Inc. 8-K (FYE November 16, 2012), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312512474248/d440083d8k.htm>

Outdoor Channel Holdings, Inc. 8-K EX 99.2 (FYE March 4, 2013), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312513089245/d495755dex992.htm>

Outdoor Channel Holdings, Inc. DEFA14A (FYE May 2, 2013), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312513196482/d531626ddefa14a.htm>

Outdoor Channel Holdings, Inc. DEFA14A (FYE May 6, 2013), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312513201776/d533118ddefa14a.htm>

Outdoor Channel Holdings, Inc. DEFM14A (FYE April 11, 2013), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312513150322/d505077ddefm14a.htm>

Outdoor Channel Holdings, Inc. SC 13D/A EX-99.1 Form of Support Agreement (FYE November 27, 2012), available at <https://www.sec.gov/Archives/edgar/data/760326/000119312512482263/d445324dex991.htm>

Pepsi Center, "About KSE," available at <https://www.pepsicenter.com/kse/company/about-kse/>

APPENDIX III: PUBLICATIONS

UC Davis Business Law Journal (Spring 2010), Volume 10

Michael A. Williams, Kevin Kreitzman, Melanie Stallings Williams, & William M. Havens,
Estimating Monopoly Power with Economic Profits, pp.125 - 150

BRG Review (Winter 2011), Volume 1 Issue 1

Kevin Kreitzman, *THE VALUE OF CONTROL: CONTROL PREMIUMS, MINORITY INTEREST DISCOUNTS, AND THE FAIR MARKET VALUE STANDARD*, pp. 10 - 24

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NIC SALOMON,

Plaintiff,

v.

**KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN CAPITAL LLC,**

Defendants.

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**CIVIL ACTION NO.
3:15-CV-666-M**

EXHIBIT B

**AFFIDAVIT OF KEVIN D. EVANS IN SUPPORT OF
KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR
CHANNEL HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NIC SALOMON,

Plaintiff,

vs.

KROENKE SPORTS &
ENTERTAINMENT, LLC, OUTDOOR
CHANNEL HOLDINGS, INC., and
PACIFIC NORTHERN CAPITAL,
LLC,

Defendants.

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) CIVIL ACTION NO.:
) 3:15-CV-00666-M

VIDEOTAPED DEPOSITION OF KEVIN KREITZMAN
San Francisco, California
Wednesday, October 24, 2018
Volume 1

Job No. CS3059264

Reported by:

RACHEL FERRIER, CSR No. 6948

Job No. 3059264

PAGES 1 - 246

1 BY MR. EVANS:

2 Q Is it fair to say, Mr. Kreitzman, that the only
3 deposition you reviewed prior to issuing your report was
4 the deposition of Scott Long?

5 A Yes.

6 Q Okay. Did you speak or interview with Mr. -- did
7 you speak with Mr. Salomon prior to issuing your report?

8 A Yes, I did.

9 Q How many times?

10 A Twice.

11 Q Was Mr. Ibrahim present during that conversation?

12 A I believe he was on the line, yes.

13 Q Can I get you to look at Exhibit 165 again? And
14 I'd ask you to turn to Exhibit 2 to your report, which I
15 think -- or Appendix 2. I'm sorry. They're -- they're
16 called appendix -- appendices, and I think it starts on
17 page 47?

18 A Mm-hmm.

19 Q And so what I would like you to do is look at
20 page 47, 48, 49, 50, 51, and 52, and my question for you
21 is: Does that list of documents -- is that a
22 comprehensive list of the documents that you reviewed
23 for purposes of forming your opinions in this case?

24 MR. IBRAHIM: And 53, by the way.

25 MR. EVANS: Well, I was talking -- okay. You're

1 discussion of PNC providing -- or perhaps it was
2 somewhere else, but.

3 Q Aside from the term sheet and based upon the
4 documents and the other information that you have looked
5 at for purposes of forming your opinions in this case,
6 have you seen any reference in any document that PNC was
7 going to fund the entire acquisition price for the
8 aerial camera business?

9 A No.

10 Q Since -- I take it you have not read
11 Mr. Holowaty's deposition either; is that correct?

12 A No.

13 Q So you don't know what Mr. Holowaty testified to
14 under oath regarding that point, whether PNC was going
15 to fund the entire acquisition price, do you?

16 A No, I don't.

17 Q Does it concern you that you don't know what
18 Mr. Holowaty testified to under oath about PNC and its
19 funding of the acquisition price? Does that concern you
20 at all?

21 MR. IBRAHIM: Form objection --

22 THE WITNESS: No.

23 MR. IBRAHIM: -- argumentative.

24 BY MR. EVANS:

25 Q It doesn't concern you?

1 THE WITNESS: No, I haven't --

2 MR. EVANS: Okay.

3 THE WITNESS: -- looked at specifics.

4 BY MR. EVANS:

5 Q Okay. I want to talk about the specific opinions
6 that you have offered in what we have now marked as
7 Exhibit 165, which is the corrected pagination version?

8 A Mm-hmm.

9 Q -- of your report.

10 And one of the things, if I -- if I understand
11 your report correctly, that you looked at was what you
12 call "loss compensation to Mr. Salomon"; is that
13 correct?

14 A Yes.

15 Q Okay. What information did you rely upon in
16 forming your opinions on that issue of lost
17 compensation?

18 A Well, what I did, I looked in the
19 interrogatories, and there was a section on loss
20 compensation based on historical payments. And when I
21 looked at this, it was, well, there -- if this
22 transaction had happened and there was bus- -- business
23 that Mr. Salomon was a part of, he would have a salary.
24 And I reasoned that the best estimate of that would have
25 been what he was earning before in a similar position.

1 Q So is it fair to say you made an assumption that
2 Mr. Salomon would be compensated at the same level after
3 an acquisition of the aerial camera business as he had
4 been compensated before acquisition of the aerial camera
5 business?

6 A Yes. And that was, I thought, a reasonable
7 expectation because that was the best -- the best
8 comparison I would have about what he would have earned
9 is what he did earn.

10 Q And -- and was your assumption based upon
11 anything other than Mr. Salomon's answers to my client's
12 interrogatories, or did you also consider something
13 else?

14 A Well, I just considered what would be the best
15 estimate of what it would be, and that was -- those are
16 the only numbers I -- I had seen provided, and I
17 believed it was a very reasonable assumption that he
18 would be paid at a similar rate.

19 Q Did -- do you know whether Mr. Salomon and PNC
20 agreed on what Mr. Salomon's position would be with the
21 aerial camera business had there been an acquisition?

22 A Well, everything I've seen was that Mr. Salomon
23 would have been the president of the company. Again, I
24 don't recall seeing any final agreements because I don't
25 think that happened.

1 Q You said everything that you looked at led you to
2 believe that Mr. Salomon would be the president of the
3 business.

4 What did you see that led you to believe that
5 any -- post any acquisition, Mr. Salomon would have
6 been -- or remained president of the company?

7 A Well, there were a few things that talk- --
8 discussed the company going forward. First of all, that
9 he was the president previously continuing. There
10 was -- in the agreement, he was also part of the
11 agreement. He signed it along with PNC. I think if he
12 had been unimportant, he would not have been part of
13 that.

14 Q And your recollection is that Mr. Salomon and PNC
15 signed that term sheet on behalf of some unnamed
16 purchaser; right?

17 A Yes. Company that had not yet been formed.

18 Q Right.

19 And that was never formed, to your knowledge;
20 right?

21 A Right.

22 Q Okay. Do you know whether PNC and Mr. Salomon
23 had an agreement on what his compensation would be in
24 the event there had been an acquisition?

25 A I'm not aware of any such -- such agreement. I

1 would have used it if I found it.

2 Q Did your -- did the opinion that you have offered
3 in terms of loss compensation to Mr. Salomon -- did that
4 take -- did that opinion that you have given take into
5 consideration Mr. Salomon's performance as president of
6 the aerial camera business?

7 MR. IBRAHIM: Form objection.

8 THE WITNESS: Well, I think that, you know,
9 historically, there was -- a portion of his compensation
10 was bonus that I would say was related to some measure
11 of performance they had.

12 BY MR. EVANS:

13 Q Is that --

14 A I think, in general, someone's -- someone's
15 compensation would be related to performance.

16 Q Well, but did your opinion take into
17 consideration Mr. -- the -- the performance of the
18 aerial camera business from January 2009 through 2013?

19 A What do you -- what do you mean by "the
20 performance"?

21 Q You don't know what I mean by "performance"?

22 A No.

23 Do you mean --

24 Q Financial performance.

25 A -- are you referring -- are you referring to the

1 A No.

2 Q Okay. Have you seen any evidence to support your
3 assumption that there were other investors who were
4 going to contribute money to the operations of the
5 aerial camera business?

6 A No, but that would be a -- a company will
7 sometimes, if they are going to grow, reach a point
8 where they go back to the market and get more funding.
9 It's not an unusual estimate. You certainly wouldn't
10 identify who these people might be ahead of time. It's
11 not normal. It simply makes sense.

12 Q So you are assuming there would be other
13 investors in the future; is that right?

14 A Possibility.

15 Q Possibility. Okay.

16 And were you aware of the fact, Mr. Kreitzman, as
17 Mr. Holowaty testified in a deposition you didn't read,
18 that PNC attempted to find other investors prior to
19 May 17th of 2013?

20 MR. IBRAHIM: Objection; lacks foundation, calls
21 for speculation.

22 MR. EVANS: I can understand why you would think
23 it lacks foundation, because you weren't at the
24 deposition.

25 Q But were you aware of that fact?

1 they would go into the market.

2 BY MR. EVANS:

3 Q But you can't tell me, as you sit here today, a
4 single person, a single entity, a single investor who
5 had agreed to invest funds in the aerial camera business
6 after May 17th of 2013, can you?

7 MR. IBRAHIM: Form objection.

8 THE WITNESS: Again, I didn't look for specific
9 companies making specific investments in this company.

10 BY MR. EVANS:

11 Q So the answer to my question is: No, you can't
12 tell me that; right?

13 A I think I answered your question.

14 Q No, you really didn't.

15 You can't tell me the name of a single person or
16 a single entity who would have invested funds in the
17 aerial camera business after May 17, 2013; right?

18 MR. IBRAHIM: Form objection.

19 THE WITNESS: Okay. Let me look at the -- my
20 timeline here, so May 17th. Okay. So this was Outdoor
21 disclose completed merger with KSE. No.

22 BY MR. EVANS:

23 Q Okay. On paragraph 3 of your report, page 2, I'm
24 switching gears, by the way, just off the --

25 A Okay.

1 I had seen in terms of what the equity would be, so --

2 Q Okay.

3 A -- if you look at this, it's typical that someone
4 in the position Mr. Salomon was in would get an equity
5 position as part of a transaction. It's also typical
6 there would be options involved, and this was the only
7 information I've seen anywhere talking about this.

8 And I also had spoken to Mr. Salomon, and I asked
9 him if his -- if there had been any objections, at least
10 to the proposed structure that he's aware of. He said
11 no.

12 Q Okay. Let me show you what's been marked as
13 Exhibit 140 in this case. Sorry, it's been -- it was
14 marked in a previous deposition, and I'm going to ask
15 you: Is that the chart that you were just referring to?

16 A Yes.

17 Q Okay. Now, in the course of performance -- or,
18 excuse me, in the course of your review of information
19 and the provision of your opinions on the benefit of the
20 bargain damages in this case, have you seen any evidence
21 at all stating that PNC agreed to the proposed equity
22 structure reflected in Exhibit 140?

23 MR. IBRAHIM: Form objection.

24 THE WITNESS: And I think I already said that,
25 but, no, he had -- he had proposed it, and PNC had not

1 replied, and this was --

2 MR. EVANS: Well, I know --

3 THE WITNESS: -- something that happened -- yeah.

4 BY MR. EVANS:

5 Q I know what you've told me what Mr. Salomon told
6 you --

7 A Yeah.

8 Q -- but I'm asking: Have you seen anything
9 anywhere else, other than what Mr. Salomon shared with
10 you, where PNC agreed to the proposed equity structure
11 reflected in Exhibit 140?

12 MR. IBRAHIM: Form objection.

13 THE WITNESS: No, I have not seen any agreement
14 by PNC.

15 BY MR. EVANS:

16 Q So -- so, then, why did you use -- without an
17 agreement between Mr. Salomon and PNC, why did you use
18 Mr. Salomon's proposed equity structure in computing or
19 determining the benefit of the bargain losses in your
20 opinions?

21 MR. IBRAHIM: Form objection.

22 THE WITNESS: Again, remember that this -- this
23 company was never formed, and in -- in terms of what the
24 structure would be, I needed to come up with something.
25 I think that zero equity for Mr. Salomon would not be a

1 reasonable expectation, and this one is a document that
2 was out there. It's certainly reasonable the, you know,
3 8 percent equity position, the terms of the options.
4 These are, you know, very typical for things that I
5 would have seen in similar types of transactions. This
6 is a -- you know, a very typical proposal. I didn't see
7 anything on the other side. This is -- this is what
8 there was. I had to rely on something.

9 BY MR. EVANS:

10 Q So you are assuming that PNC would have agreed to
11 this proposed equity structure; right?

12 A Well, I'm assuming that this is a representation
13 of what it would be. Could it have been modified or
14 changed in some ways through a negotiation? Possibly.
15 This is my best estimate of what the equity structure
16 would be.

17 Q How much equity was Mr. Salomon contributing --
18 was Mr. Salomon going to contribute to the acquisition
19 of the aerial camera business?

20 MR. IBRAHIM: Form objection.

21 THE WITNESS: Again, I'm not aware that he was
22 putting -- you are talking about -- equity, you are
23 talking about cash and not --

24 MR. EVANS: Dollars.

25 THE WITNESS: -- in terms of --

1 Q So I understand your --

2 MR. IBRAHIM: Objection; argumentative.

3 BY MR. EVANS:

4 Q I understand your situation. Okay?

5 Can you give me another example of a situation
6 where a person who's contributing zero cash to the
7 acquisition of an entity receives 8 percent or more
8 equity in that ac- -- in that acquired company?

9 MR. IBRAHIM: Form objection.

10 THE WITNESS: I can't think of a name. I know
11 I've seen them.

12 BY MR. EVANS:

13 Q We just have to trust your recollection; right?
14 You can't name -- you can't give me a specific instance?

15 A Well, I gave you the instance of myself --

16 Q Other than yourself.

17 A -- 60 percent.

18 Q Other than yourself.

19 A Yeah.

20 Q Fair to say you can't -- you can't give me a
21 specific instance other than yourself; right?

22 A As I sit here now, no.

23 Q Okay. Stick- -- sticking with your three
24 scenarios on what you call the "benefit of the bargain
25 losses," is it fair to say that your three scenarios are

1 also based, at least in part, on -- on your valuation of
2 the aerial camera business?

3 A On my valuation?

4 Q Did you do an analysis of the valuation of the
5 aerial camera business?

6 A Yes.

7 Q And -- and you used that valuation in arriving at
8 the damages under the benefit of the bargain losses in
9 your opinion; right?

10 A For Scenario 1.

11 Q Right. Good point. For Scenario 1.

12 A Yes.

13 Q You didn't -- you didn't use that for Scenario 2?

14 A No.

15 Q You didn't use that for Scenario 3?

16 A No.

17 Q So let's stick, then, with Scenario 1, and
18 explain to me the revenue projections that you used.

19 A Okay. So the revenue projections that I used
20 were -- revenue projections were things that I had
21 found, I believe, prepared by Mr. Salomon while at KSE.
22 It was the closest ones I could find to the time. And
23 he had several of them. The earliest one is the one
24 that I used.

25 Q Well, I want to know each one -- each projection

1 you relied upon to arrive at your opinion for the
2 benefit of the bargain losses in Scenario 1.

3 A Okay. So in Scenario 1, I relied on the
4 projections prepared in 2013, and these were, you know,
5 done within the normal course of business. I know that
6 they had -- I had seen that they had been circulated
7 within KSE, and I believe they were also shown to third
8 parties in the company, so these were projections that
9 were done within the normal course of business at around
10 the time.

11 Q Can you turn to page 16 in your report, please,
12 which is Exhibit 165. There's a table reflected on that
13 page.

14 A Yes.

15 Q Are those the projections you are referring to?

16 A Yes.

17 Q All right. If you look at paragraph 46 of your
18 report on page 16, it's under subsection C,
19 "Projections" --

20 A Mm-hmm.

21 Q -- you say, "There have been several projections
22 reflecting various business plans produced in this
23 litigation." Let's stop there.

24 Tell me the projections that you have seen
25 reflecting various business plans produced in this

1 Q Exactly.

2 A And I assume that.

3 Q Thank you.

4 And so did you -- do you have an understanding,
5 as you sit here today, how many NFL teams are built
6 in use -- let me strike the question. Start again.

7 A Yeah.

8 Q Do you have an understanding, as you sit here
9 today, how many permanent installs are assumed in the
10 table under "SKYCAM Management Projections"?

11 MR. IBRAHIM: Objection; irrelevant.

12 MR. EVANS: You may think so, Ahmed.

13 THE WITNESS: I don't recall the details of the
14 number of permanent versus temporary. I remember
15 reading through all that, but, no, I couldn't tell you
16 what the assumption is for permanent.

17 BY MR. EVANS:

18 Q So -- but -- so, Mr. Kreitzman, this is your
19 language; right? You say, "I believe these projections
20 best reflect the business plan that would have been
21 implemented."

22 A Mm-hmm.

23 Q How can you possibly sit here today and tell me
24 this reflects the best -- the business plan that would
25 have been implemented when there's only two NFL teams

1 today with permanent installs of the aerial camera
2 business?

3 MR. IBRAHIM: Objection; argumentative, lacks
4 foundation.

5 THE WITNESS: Two very different things.

6 BY MR. EVANS:

7 Q Why are they different?

8 A One is expectations at the time, which would have
9 gone to the value at the time, and the other is what
10 happened with KSE owning the company, and we can't
11 assume that the two things would converge.

12 Q It's your assumption Mr. Salomon and PNC would
13 have done a better job in managing -- than KSE in
14 managing the aerial camera business; right?

15 A I didn't really look at it. I have no opinion
16 about what KSE did with the business. I didn't -- I
17 don't think they have been forthcoming in information --

18 Q Well, I appreciate the party line --

19 A Yeah.

20 Q -- but your opinion is based on the assumption --
21 it has to be, Mr. Kreitzman. It has to be.

22 Your opinion is based on the assumption that PNC
23 and Mr. Salomon would have done a better job in
24 operating the aerial camera business than KSE; right?

25 MR. IBRAHIM: Objection to the gratuitous comment

1 as argumentative.

2 THE WITNESS: Again, I have not evaluated what
3 KSE has done with the aerial camera business.

4 BY MR. EVANS:

5 Q Okay. So your opinion was formed, what, two
6 months ago? Within the last two months; right?

7 A Yes.

8 Q It wasn't formed back in -- on May 17 of 2013;
9 right?

10 A Right.

11 Q And we have already talked about the fact that
12 when you are using -- when you valued present value cash
13 flow in these other instances that you testified to this
14 morning, you used historical information; right?

15 A Yeah.

16 MR. IBRAHIM: Form objection.

17 BY MR. EVANS:

18 Q Well, you are ignoring the historical information
19 here in terms of how many in- -- permanent installs
20 there are in NFL stadiums, aren't you?

21 A Well, I think we're -- we're probably using this
22 term differently.

23 Q Well, tell me how.

24 A Okay. So if we have the valuation -- because, in
25 fact, we have projections, and the projections, at this

Page 115

1 AFTERNOON SESSION

1:17 P.M.

2

3 THE VIDEOGRAPHER: Okay. We are back on the
4 record, then, at 1:17.

5 BY MR. EVANS:

6 Q Mr. Kreitzman, I just want to make sure that -- I
7 may have misunderstood part of your testimony earlier,
8 so I just want to ask this question, see if I -- if I
9 truly did misunderstand it or if I'm -- if I got it
10 accurate.

11 Let me -- is it -- is it your testimony that the
12 financial results between -- on the aerial camera
13 business --

14 A Yeah.

15 Q -- between 2013 and the time of your report you
16 did a few weeks ago --

17 A Yeah.

18 Q -- are not relevant to your damage analysis?

19 A Not relevant to the valuation. So what's
20 relevant is the expectations at the time, not what
21 happened in -- controlled by a different entity.

22 Q So does that mean they are not relevant to your
23 ultimate damages -- benefit-of-the-bargain damage
24 analysis?

25 A I'm trying to think if there's any way it would

1 be relevant. Not really.

2 Q Okay. So I didn't misunderstand. I just wanted
3 to make sure of that.

4 Can I get you to look at -- go back to
5 Exhibit 165. That's your report, page 16. I think you
6 already have it open.

7 So if you take a look at your chart, the 2013
8 estimate of revenue is 12.7 million.

9 Do you see that?

10 A Mm-hmm.

11 Q And the 2018 estimate of revenue is 52.2 million?

12 A Yes.

13 Q Do you understand what the -- what the basis for
14 that jump in almost \$40 million in revenue over five
15 years was?

16 A That would be based primarily on increasing the
17 number of events, the number of cameras and systems.

18 Q And do you know whether those assumptions
19 happened?

20 MR. IBRAHIM: Objection; form and relevance.

21 THE WITNESS: Well, you just -- just showed me
22 something that was 2018 that was a different number.

23 BY MR. EVANS:

24 Q So?

25 A So they did not happen there, no.

1 from KSE, which didn't include the sale of the aerial
2 camera business.

3 Q So you are not -- you don't know one way or the
4 other whether, for instance, disgorgement is even an
5 available remedy under the claims alleged by
6 Mr. Salomon, do you?

7 A No. It sounds like a legal opinion. What I'm
8 doing is simply saying: What did they gain? And that's
9 pretty clear, so \$2.25 a share.

10 Q Well, let's test that pretty clear.

11 You say that the intermediate transaction would
12 have respected the sale of the aerial camera business.

13 You say that in paragraph 81; right?

14 A Yes.

15 Q And, in fact, that's your second sentence in
16 paragraph 81; right?

17 A Mm-hmm.

18 Q And you are referring there to the InterMedia
19 offer reflected in the November 2012 merger agreement
20 between InterMedia and Outdoor; right?

21 A Okay. Let me look at my timeline and I can --

22 Q Okay.

23 A Yes.

24 Q What was the offer made by InterMedia per share
25 in November of 2012?

1 THE WITNESS: Again, what I'm referring to in the
2 disgorgement argument is that by accepting competing
3 offers that didn't respect the deal, the price was bid
4 up from \$8.00 to 2.25. Typically in a bidding
5 situation, you would get a better price, so that would
6 be -- the motivation for wanting to be in the bidding
7 situation is very high.

8 Okay. So this is what Outdoor gained by being
9 willing to not honor that transaction, was 2.25. And
10 had they done the deal at a higher price and they would
11 have respected it, we wouldn't be here. Okay? But it
12 is the competing -- competitive bidding process.

13 BY MR. EVANS:

14 Q Who received the benefit of the increase in the
15 share price?

16 A Well, that was money that went to Outdoor.

17 Q You -- you understand Outdoor was publicly
18 traded; right?

19 A Yes.

20 Q Okay. So who --

21 A 41 percent into --

22 Q Right.

23 A -- 41 percent privately held by the -- I forget
24 their names.

25 Q Matthews?

1 The financial results are, you know, a company at
2 a time. That is, investing. They spent a lot of money
3 protecting their intellectual property. If they never
4 changed anything -- okay? -- it stayed exactly the same
5 way it was and continued to not have positive cash,
6 well, that wouldn't make any sense to continue the
7 business at that point. If that was the expectation,
8 that they are never going to make any money, no one
9 would be making any money on it. That wasn't the
10 expectation.

11 BY MR. EVANS:

12 Q Do you have any evidence that PNC would have
13 accepted continued performance of the aerial camera
14 business such as the results obtained during 2009
15 through 2013?

16 A No, and I see no reason why that would even be
17 something you would consider. You're not -- you don't
18 expect that this is going to continue simply because --
19 you know, if this business never made money, you
20 wouldn't continue to put money into it.

21 Q Right.

22 You would hope you could attract additional
23 investors to fund additional capital expenditures to
24 increase equipment, increase events; right?

25 MR. IBRAHIM: Form objection.

1 2013, assuming they acquired the aerial camera business?

2 MR. IBRAHIM: Form objection.

3 THE WITNESS: Well, again, going back to the term
4 sheet, I believe PNC said they had -- were willing to
5 provide the financing. If you are looking for
6 additional financing, a lot of things go into that, and
7 not unusual for someone to approach a company and have a
8 project not be in their -- in the type of things that
9 they would normally invest in. So if they had
10 approached someone and they said "no," I wouldn't worry
11 too much about that. That happens all the time. You
12 don't need everyone to say "yes." You just need someone
13 to say "yes."

14 BY MR. EVANS:

15 Q You hope someone will say "yes"; right?

16 MR. IBRAHIM: Objection; form.

17 THE WITNESS: Well, I guess if you are looking
18 for financing, you hope someone says "yes" to financing.

19 BY MR. EVANS:

20 Q But you don't have any evidence, as you sit here
21 today, to give me the name of a single investor that
22 Mr. Salomon and PNC hoped to attract additional
23 investment from, do you?

24 A No.

25 Q Okay. Can you look at page 7 -- paragraph 17 on

1 Q I understand what you were asked to do. We have
2 exhausted that pretty --

3 A Yeah.

4 Q -- extensively here, Mr. Kreitzman, but that
5 wasn't my question.

6 My question was -- and I'll read it back -- Does
7 hearing what Mr. Holowaty testified to during his
8 deposition -- okay?

9 A Mm-hmm.

10 Q -- concern you in any way regarding the
11 assumptions you were asked to make in forming your
12 opinions?

13 MR. IBRAHIM: Form objection; asked and answered.

14 THE WITNESS: You know, again, no, because that
15 was -- that was a whole area that I didn't explore
16 because I wasn't looking at the liability and was -- was
17 this -- was this transaction going to happen or not. I
18 assumed the transaction would happen, and one piece of
19 information in isolation that seems to contradict what I
20 had seen in other places would not necessarily say,
21 well, you know, I'm concerned about this. I'm not -- I
22 made that assumption that this would -- that this would
23 happen, period.

24 MR. EVANS: Can we go off the record for a
25 second?

1 Q And you saw no agreements with anybody -- PNC or
2 any other employee -- prospective employee about
3 engaging them as management of the aerial camera
4 business should PNC and Mr. Salomon acquire that
5 business?

6 A No, I did not look for particular things.

7 On the other hand, we do have, again, PNC views
8 the company's existing management team as an
9 instrumental asset in implementing the growth.

10 Q What's your evidence that the current management
11 team that was in place at the time agreed to stay on if
12 PNC and Mr. Salomon were to acquire the aerial camera
13 business?

14 MR. IBRAHIM: Form objection.

15 THE WITNESS: As I sit here, I can't tell you who
16 was going to stay or go.

17 BY MR. EVANS:

18 Q Okay. Can I get you to look at paragraph 28, I
19 have the same type of questions.

20 A Okay. What relevant data didn't I consider?

21 Q Well, I'm asking: Do you agree or disagree with
22 that? Do you think you considered all relevant data?

23 A I think I used the best information available.

24 Q Okay. Well, you see where she says you didn't
25 consider the depositions of key witnesses -- of other

1 witnesses, such as Jeff Holowaty, Roger Werner, Cathy
2 Lee, Tom Hornish, Tom Allen, James Martin, and even
3 Mr. Salomon.

4 Did you even read Mr. Salomon's deposition?

5 A Did not read Mr. Salomon's deposition.

6 Q You didn't think it was necessary to read your
7 own client's deposition before you issued an opinion in
8 this case?

9 A No. I had a narrow -- a narrow -- a narrow focus
10 of what I was looking for.

11 Q Take a look at paragraph 31, if you would. I'm
12 going to have the same questions.

13 A Mm-hmm.

14 Okay. So I read it, yeah.

15 Q Do you agree or disagree with the statements made
16 by Ms. Van Tassel?

17 A Well, I agree if you have a history that
18 represents what's expected going forward, it's good to
19 have that information, which is what this highlighted
20 sentence, I believe, is trying to say.

21 Q I'm sorry. What highlighted sentence?

22 A Well, there's one that's in bold: "When
23 sufficient earnings history is available" --

24 Q Oh, okay. That one, okay.

25 A I believe that's what you were referring to here.

1 reading of this document?

2 A That I read it that this was within KSE and they
3 were --

4 Q And not a stand-alone.

5 You understood that; right?

6 MR. IBRAHIM: Form objection.

7 THE WITNESS: I certainly understood that this
8 was done during the time when it was with KSE --

9 MR. EVANS: Wasn't my question.

10 THE WITNESS: -- yes.

11 MR. EVANS: Wasn't my question.

12 Q Please listen to my question, because it's an
13 important question. Okay?

14 A Okay.

15 Q You understood, did you not, that the projections
16 set forth by Mr. Salomon in Exhibit 54 were projections
17 assuming that the aerial camera business was a part of
18 KSE? Did you not?

19 A I think you could in- -- possibly infer that,
20 given that it was within KSE, yes.

21 Q Okay.

22 A I don't -- I don't know that -- again, what --
23 what the assumptions of this structure were and what
24 KSE's plans were. I know very little bit about --
25 little about what KSE wanted to do with this company.

1 Q Then why, Mr. Kreitzman, did you feel it
2 appropriate to utilize projections prepared by
3 Mr. Salomon on the assumption that the aerial camera
4 business was -- remained a part of KSE? Why did you
5 think it appropriate to use those same assumptions in
6 forming your valuation and damage opinion on a stand --
7 for a stand-alone company?

8 A Because of the choices I had, I thought those
9 were the most relevant.

10 Q Why?

11 MR. IBRAHIM: Asked and answered.

12 THE WITNESS: Okay. And, again, these were
13 projections that included new investments where the
14 others, for example, in Outdoor seemed to assume no
15 investment in the company.

16 BY MR. EVANS:

17 Q Investments by whom?

18 A By whomever.

19 Q By KSE; right? Because this was prepared while
20 he was an employee of KSE based upon the aerial camera
21 business being a part of KSE; right?

22 A It was -- it was business based on a business
23 model of growing the company.

24 Q While the aerial camera business was a part of
25 KSE; right?

1 A And it was done by --

2 Q Right?

3 A -- him, yes, when he was at KSE.

4 So why would I use this? This is -- these were
5 the only projections that were consistent with a company
6 that is set up to grow this business.

7 Q And you didn't ask your client, Mr. Salomon, for
8 any projections prior to the acquisition of the aerial
9 camera -- the Outdoor Channel and assumption of the
10 aerial camera business by KSE, did you? You didn't ask
11 Mr. -- Mr. Salomon for any projections?

12 MR. IBRAHIM: Form objections.

13 THE WITNESS: I did ask, Are there any other
14 projections?

15 BY MR. EVANS:

16 Q Well, I'm not asking --

17 A Yeah.

18 Q -- did you ask, Are there any?

19 A Yeah.

20 Q Did you ask him for it?

21 A No, and I don't think that that would have been
22 very acceptable. This is something done during the
23 normal course of business as opposed to something done
24 for the litigation. I tend to avoid those things if
25 possible.

1 A By him, within -- within the context of what he
2 thought was likely to happen.

3 Q Yeah, what he thought.

4 Where's PNC in the picture? Did they agree to
5 this? You said no already, so why is that not
6 speculative?

7 MR. IBRAHIM: Form objection.

8 THE WITNESS: I think I just answered that.

9 Okay. And so what would have PNC agreed to? We
10 will never know.

11 BY MR. EVANS:

12 Q Because they didn't agree to anything with them;
13 right? You haven't seen any agreement between PNC and
14 Mr. Salomon for shares and options; right?

15 A No. This company was never formed.

16 Q So why didn't you use the actual shares and
17 equity that he had at the time of the term sheet instead
18 of basing your calculation on something Mr. Salomon
19 claims he should have been given?

20 A There were no --

21 MR. IBRAHIM: Form objection.

22 THE WITNESS: There were no shares of Newco at
23 the time.

24 BY MR. EVANS:

25 Q I'm not talking about Newco. We have already

1 situation, that it was appropriate to rely only on
2 Mr. Salomon's proposal; right?

3 A Again, that was the -- the best information I
4 could find regarding that, and these other companies,
5 you know, what they did or didn't do, wouldn't relate to
6 the situation at hand.

7 Q And did you make any effort to contact Jeff
8 Holowaty or Kelly Holowaty to ask them what they thought
9 of Mr. Salomon's proposal and whether that would have
10 been something that might have been acceptable to them?

11 A No.

12 MR. IBRAHIM: Form objection.

13 BY MR. EVANS:

14 Q You just took Mr. Salomon's word?

15 MR. IBRAHIM: Form objection.

16 THE WITNESS: I used -- I used that document.

17 BY MR. EVANS:

18 Q Can I get you to look at paragraph 39 of
19 Ms. Van Tassel's rebuttal report.

20 A Mm-hmm.

21 Q Do you agree or disagree with that sentence in
22 paragraph 39?

23 A What, specifically, is she referring to with
24 removing the overhead charges? If we look at 54, the
25 numbers, and it says: Includes SkyCam stand-alone

1 A Mm-hmm.

2 Okay.

3 Q Do you disagree with anything Ms. Van Tassel says
4 in paragraph 49?

5 A \$8.00, 10.25 -- this is quote from my report. I
6 hope I agree with it, but -- no. 51. Okay.

7 And para 49 it's -- it's not really consistent
8 with what I did and what I assumed. I didn't attribute
9 anything to ACB. I simply said, by accepting competing
10 offers, Outdoor was able to raise its price from 8.00 to
11 10.25 a share, and, therefore, they gained that amount
12 by accepting the competing offers.

13 Q And you think your methodology is appropriate,
14 even though InterMedia made a \$9.75 per-share offer,
15 which was accepted by the board, which, in your
16 testimony, would have respected the sale of the aerial
17 camera business?

18 A Yes, because, remember, the -- what I'm referring
19 to here is the -- is the fact that this was a
20 competitive bid.

21 Q I understand.

22 A No competitive bid, it was \$8.00, and everything
23 points to that. If there were no competitive bid, this
24 would have gone for 8.00.

25 Q Do you understand that a board has a fiduciary

1 obligation to its shareholders?

2 A Yes.

3 Q Okay. Do you think a board has a fiduciary
4 obligation to accept a superior offer?

5 MR. IBRAHIM: Form objection; calls for legal
6 conclusion.

7 THE WITNESS: Yes.

8 MR. EVANS: Okay.

9 THE WITNESS: If -- if -- if they are allowed to
10 do so, if they haven't signed anything to the contrary.

11 BY MR. EVANS:

12 Q And so you think the board --

13 A All things being equal, yes.

14 Q You think the board had a fiduciary obligation,
15 when InterMedia made its offer of \$9.75 per share on
16 May 3 of 2013, which it deemed superior to be that -- to
17 that of KSE, to accept that offer?

18 MR. IBRAHIM: Objection; calls for legal
19 conclusion and calls for speculation.

20 THE WITNESS: Okay. So you are referring to the
21 bidding process and things that happened in the
22 interim --

23 BY MR. EVANS:

24 Q I'm referring to the InterMedia offer.

25 A -- and, you know, the -- you know, the board, of

1 Lazard Freres' --

2 A Yeah.

3 Q -- valuation.

4 Is it fair to say that you haven't -- you don't
5 know what's included in that valuation because you
6 haven't seen it; right?

7 A Well, I know some things.

8 MR. IBRAHIM: Misstates the testimony.

9 THE WITNESS: Yeah, I know some thing -- I think
10 I talked about this earlier. They -- there was an
11 explanation of some of the things that it assumed. It
12 used -- he uses projections for management. It had
13 methodology that they discussed they used. It showed
14 the assumptions for terminal value that they -- they
15 used, and it showed the assumptions for cost of capital
16 that they used.

17 MR. EVANS: Right.

18 Q You haven't seen the report -- the Lazard Freres'
19 report; right?

20 A No, I haven't seen the report itself.

21 Q Okay. Also, getting back to this Black-Scholes
22 model that we were talking about a few moments ago,
23 would you agree with me that if we were to use the
24 assumptions in the Black-Scholes model and came -- and
25 came to your assumptions --

1 A Okay.

2 Q Do you know anything about it?

3 A Well, if I read paragraph 47 here --

4 Q Mm-hmm. That's where I'm going. Read the last
5 sentence.

6 Do you know about that?

7 A Okay. And this was in -- back in '08?

8 Q October of 2008, \$2 million.

9 A No, I don't know about that. A lot has happened
10 since then.

11 Q Yeah, five years later, he makes a cash offer of
12 3.65 with PNC; right?

13 A Mm-hmm. Or as much as 405-, yeah.

14 Q Well, yeah, contingent purchase price; right, of
15 405-; right?

16 A Yeah.

17 Q Do you have any idea as to what the realistic
18 expectation was of those other two contingencies
19 happening?

20 A I don't recall right now exactly what they were.
21 I believe they were --

22 Q Well, one was a litigation --

23 A -- collection litigation proceeds --

24 Q Did that ever happen?

25 MR. IBRAHIM: Form objection.

1 BY MR. EVANS:

2 Q Did they ever collect the roy- -- the payments
3 from Actioncam?

4 MR. IBRAHIM: Form objection.

5 THE WITNESS: Again, I don't -- I don't know what
6 happened after this time period within KSE.

7 BY MR. EVANS:

8 Q So you don't know anything about the
9 contingencies, whether they happened or didn't happen;
10 right?

11 A No.

12 Q Did you ever ask Mr. Salomon why he made a
13 \$2 million offer for the aerial camera business in
14 October of 2008?

15 A No.

16 Q So I take it, then, that since you never talked
17 to him about it, that didn't form a part of your
18 valuation and opinion in this case in terms of damages?

19 A No. It's somewhat stale information.

20 Q Was it irrelevant information?

21 A Just from the standpoint of other offers, it was
22 apparently not -- not accepted, so that doesn't make it
23 a price. You know, and it's old. It's a different
24 company in '08 than it is in '13.

25 Q Was it irrelevant information?

1 there was the liability in the case. When I went
2 through the -- the chronology of everything, it was very
3 consistent with that idea. Okay? So I didn't simply
4 assume what I was told. The -- the information that I
5 did find on my own through publicly available
6 information lined up behind that, so I wasn't simply
7 making that assumption without looking at anything.

8 BY MR. EVANS:

9 Q But, yet, you looked at no deposition testimony,
10 other than Scott Long. You looked -- you didn't look at
11 Mr. Hornish's deposition testimony, did you?

12 A No.

13 MR. IBRAHIM: Objection --

14 BY MR. EVANS:

15 Q You didn't look at Mr. Warner's deposition
16 testimony --

17 A No.

18 Q -- did you?

19 You didn't look at Ms. Lee's deposition
20 testimony, did you?

21 A No.

22 Q You didn't look at Mr. Martin's deposition
23 testimony, did you?

24 A No.

25 Q So you don't know whether -- as you sit here

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NIC SALOMON,

Plaintiff,

v.

**KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN CAPITAL LLC,**

Defendants.

§
§
§
§
§
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§

**CIVIL ACTION NO.
3:15-CV-666-M**

EXHIBIT C

**AFFIDAVIT OF KEVIN D. EVANS IN SUPPORT OF
KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR
CHANNEL HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NIC SALOMON,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:15-CV-00666-M
	§	
KROENKE SPORTS &	§	
ENTERTAINMENT, LLC, OUTDOOR	§	
CHANNEL HOLDINGS, INC., AND	§	
PACIFIC NORTHERN CAPITAL LLC,	§	
	§	
Defendants.		

REBUTTAL EXPERT REPORT OF KARYL M. VAN TASSEL, CPA

Table of Contents

Introduction 3

Summary of Opinions Related to the Kreitzman Report..... 3

Qualifications.....4

Information Relied Upon..... 4

Opinion 1 4

Opinion 2.....6

Opinion 3..... 10

Opinion 4..... 16

Introduction

1. I have been retained by Armstrong Teasdale LLP ("Counsel") on behalf of Kroenke Sports & Entertainment, LLC ("KSE") and Outdoor Channel Holdings, Inc. ("Outdoor"). Collectively, I refer to KSE and Outdoor as the "Defendants."
2. I have been asked to express my opinions regarding the Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018 ("Kreitzman Report"). Nothing in my report should be interpreted as agreement with Mr. Salomon's allegations regarding purported liability; I was not asked to and do not opine on any such issues. The fact that a particular statement contained in the Kreitzman Report is not addressed in this Rebuttal Report does not reflect my agreement with that statement. I have addressed the opinions of the Kreitzman Report overall, not necessarily each statement contained in his opinions. This Rebuttal Report is based upon the information that has been provided to me as of the date of this report. I reserve the right to update this report should additional information become available.

Summary of Opinions Related to the Kreitzman Report

3. My opinions related to the Kreitzman Report are as follows:
 - (1) The amount of claimed lost compensation is unsupported by evidence, has no basis in methodology and cannot be relied upon.
 - (2) The estimations of the benefit of the bargain damages in the Kreitzman Report do not meet the legal thresholds for economic damages, which require a reasonable degree of certainty. For instance, Mr. Kreitzman does not adequately set forth, address and/or misapplies the key elements of the valuation standards which should be considered in preparing a business valuation, including important qualitative factors which must be considered. In fact, the Kreitzman Report omits the qualitative factors most relevant in this matter, which when those factors are considered, reveal that the Kreitzman Report lacks sufficient evidence to support using the valuation of a business as a measure of damages. The Kreitzman Report, therefore, does not provide any reasonable basis for his opinion.
 - (3) Even if you assumed incorrectly that Mr. Kreitzman met the standards for utilizing the valuation of a business as a measure of economic damages in this case, his approach is not supportable due to inappropriate valuation techniques, inclusion of option pricing (based entirely on shares and options proposed by Mr. Salomon) for a large portion of the damages making the valuation speculative, and misapplication of otherwise reliable sources of valuation data.
 - (4) The disgorgement of Outdoor profits in any amount, let alone of \$58.14 million, has not been established, through the necessary fundamental business valuation or forensic accounting analysis, by Mr. Kreitzman with a reasonable degree of certainty given that there is no analysis

of the factors that would be required before rendering such an opinion. It assumes disgorgement would be an available remedy, and is based on a thoroughly flawed premise that the entire increase in purchase price between InterMedia's first offering price and KSE's last was due to the ACB. Additionally, the methodology premise is also flawed completely since the increased offering price for the merger did not benefit Outdoor, but the shareholders who held the stock at the time of the transaction, so there was no benefit by Outdoor which could be disgorged. This renders the opinion speculative and unreliable. It also does not reflect in any way the profits achieved post-merger with KSE.

4. The work in preparation of this report was performed either by myself or by my staff at BDO under my direction. The work performed is not an attest engagement as defined by the rules of the American Institute of Certified Public Accountants ("AICPA") but rather under the Statement on Standards for Consulting Services No. 1.
5. My opinions presented in this report are based on information and documents available to me as of the date of this report. Should additional information or documents become available, I reserve the right to amend or supplement my opinions.

Qualifications

6. I have attached my current curriculum vitae as Appendix 1 for full details on my experience and background, including, my expert testimony experience.
7. BDO is compensated for my work in this matter at an hourly rate of \$650. No part of BDO's compensation is dependent on the outcome of this matter.

Information Relied Upon

8. I have relied on various types of information in formulating my opinions, including deposition testimony transcripts. I have provided a list of this information as Appendix 2.

Opinion 1 - The amount of claimed lost compensation is unsupported by evidence, has no basis in methodology and cannot be relied upon.

9. The Kreitzman Report provides no basis or proven methodology for the calculation of lost compensation presented therein. In his report, Mr. Kreitzman relies on Mr. Salomon's own calculation of his lost base salary and bonus from May 6, 2014 to February 4, 2019 (the date of the beginning of the trial in this case).¹ In this calculation, Mr. Salomon assumes, and Mr. Kreitzman accepts, that he would continue to be employed as the President of the Aerial Camera Business

¹ Plaintiff's Third Supplemental Answers and Objections to First Set of Interrogatories of Defendants Kroenke Sports & Entertainment, LLC and Outdoor Channel Holdings, Inc., served August 24, 2018, page 2.

(the “ACB”)² and that the compensation structure and bonus calculation would be the same or similar. By continuing to use the same base salary and bonus amounts for his calculation, Mr. Kreitzman relies on Mr. Salomon’s claim that using these amounts results in a “conservative” approach. Using an approach you believe to be conservative does not justify using a damage analysis that is unsupported.

10. The Kreitzman Report does not provide a basis for the continued underlying assumption of the salary and bonus from previous periods after Mr. Salomon’s termination. The calculation also does not account for the performance metrics of the business under Mr. Salomon in years prior to the KSE merger. Table 1 below shows the historical revenue amounts in comparison to the base salary and bonus amounts received by Mr. Salomon. The Kreitzman Report contains no justification for assuming that Mr. Salomon would have continued to be employed by ACB after May 5, 2014, or the “Newco” and/or that he would have received the same base salary and bonus structure, particularly in light of the financial results previous to his departure. There is no evidence that PNC would have accepted such continued performance under Mr. Salomon if PNC and Mr. Salomon had acquired the ACB or that there would be sufficient capital to continue to fund the losses incurred historically under his leadership.

Table 1 - Mr. Salomon's Compensation Compared with ACB Financial Results

Year Ended	Revenues	EBITDA	Income (Loss) from Operations	Salary³	Bonus³	Total Compensation
2010 ⁴	\$ 9,140,000	(320,000)	\$ (1,243,000)	\$ 225,000	\$ 90,000	\$ 315,000
2011 ⁴	8,663,000	(744,000)	(1,634,000)	240,000	97,200	337,200
2012 ⁵	12,018,000	913,000	(123,000)	247,680	78,019	325,699
2013 ⁶	13,077,000	(384,000)	(1,774,000)	252,881	34,139	287,020

11. In addition, subsequent to the March 21, 2013 letter between Pacific Northern Capital, LLC (“PNC”) and Outdoor⁷, Mr. Salomon said he could not work with PNC⁸, and PNC/Mr. Salomon

² The Kreitzman Report is unclear whether his lost compensation claim is based upon Mr. Salomon continuing as an employee at KSE or at the “Newco” to be formed if PNC and Mr. Salomon acquired the ACB.

³ Based on actuals for the period through 2013 presented in the Plaintiff’s Third Supplemental Answers and Objections to First Set of Interrogatories of Defendants Kroenke Sports & Entertainment, LLC and Outdoor Channel Holdings, Inc., served August 24, 2018, page 2.

⁴ Form 10-K, December 31, 2011, Outdoor Channel Holdings, Inc.

⁵ Form 10-K, December 31, 2012, Outdoor Channel Holdings, Inc.

⁶ Exhibit 363.

⁷ Exhibit 304: KSE/OC:028341-028342.

⁸ Deposition of Nicolas Salomon dated May 16, 2018, Volume 2, 383:19 to 384:3.

did not have additional or other funding in place to purchase the ACB at that time. Ultimately Mr. Salomon was terminated from KSE on or about May 5, 2014.⁹

12. Therefore, the lost compensation analysis in the Kreitzman Report is unsubstantiated, speculative, and should not be relied upon.

Opinion 2 - The estimations of the benefit of the bargain damages in the Kreitzman Report do not meet the legal thresholds for economic damages, which require a reasonable degree of certainty. For instance, Mr. Kreitzman does not adequately set forth, address and/or misapplies the key elements of the valuation standards which should be considered in preparing a business valuation, including important qualitative factors which must be considered. In fact, the Kreitzman Report omits the qualitative factors most relevant in this matter, which when those factors are considered, reveal that the Kreitzman Report lacks sufficient evidence to support using the valuation of a business as a measure of damages. The Kreitzman Report, therefore, does not provide any reasonable basis for his opinion.

Legal Thresholds for Economic Damages

13. Economic damages must be proven with a reasonable degree of certainty and using methodologies which are reasonably relied upon by damages experts.¹⁰ Mr. Kreitzman acknowledges that standard and states in paragraph 4 of his report that he bases his opinions on data and analyses which are “reasonably relied upon by damage experts.” However, Mr. Kreitzman’s benefit of the bargain calculations are not supported by evidence available in this case, do not follow valuation standards, and do not meet the standard of reasonable degree of economic certainty.
14. Even though economic experts are generally not offering a legal opinion, they must understand the legal burden that is to be applied to economic damages. Section 352 of the *Restatement (Second) of Contracts* (1981) states, “Damages are not recoverable for loss beyond an amount that the evidence permits to be established with reasonable certainty.”¹¹ The Kreitzman Report lacks evidence that the data used to calculate the valuation of Mr. Salomon’s purported portion of the ACB was objective and reliable. In some cases he has not provided a bases at all in his report for his opinions. He must analyze and establish the causal link between the alleged wrongful actions and the economic damages and has not done so, which is explained more fully below.

⁹ Deposition of James Martin dated August 30, 2018, 213:10-20.

¹⁰ Weil, Roman L., Daniel G. Lentz, and Elizabeth A. Evans. (2017). *Litigation Services Handbook: The Role of the Financial Expert*. Sixth Edition. Hoboken, New Jersey: John Wiley & Sons, Inc. Page 9.

¹¹ *Ibid*.

Valuation Standards

15. Mr. Kreitzman references that the definition of damages in this case provided by counsel for Plaintiff is benefit of the bargain damages “calculated by subtracting the value received by the non-breaching party from the value the party expected to receive when the contract was made.”¹² Using this, his definition, he attempted several valuation scenarios in his analysis. Therefore, an understanding of the principles of valuation is important to explaining the ways in which Mr. Kreitzman’s work does not meet those standards.
16. Guidance is provided by each of the valuation credentialing organizations, including the National Association of Certified Valuation Analysts (“NACVA”), the American Institute of Certified Public Accountants (“AICPA”) and the American Society of Appraisers (“ASA”), providing standards to be followed in developing a conclusion of value. While Mr. Kreitzman is not a member of these organizations, the standards put forth by each organization provide similar guidance and the key considerations in estimating a conclusion of value. According to these standards, the standard of value in legal cases with benefit of the bargain is fair market value (“FMV”), “[t]he price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.”^{13,14}
17. For example, the NACVA guidance¹⁵ indicates that the following elements should be identified to define the assignment and determine the scope of work:
 - a. Subject to be valued;
 - b. Interest to be valued;
 - c. Valuation date;
 - d. Purpose and use of the valuation;
 - e. Standard of value;
 - f. Premise of value;
 - g. Intended users;
 - h. Valuation approaches or methods;
 - i. Assumptions, limiting conditions and scope limitations;
 - j. Ownership size, nature, restrictions and agreements;
 - k. Sources of information; and
 - l. Other factors that may influence value when appropriate in the opinion of the member.

¹² Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018, paragraph 49.

¹³ <https://s3.amazonaws.com/web.nacva.com/TL-Website/PDF/Glossary.pdf>

¹⁴ The International Glossary of Business Valuation Terms is a joint effort of the American Institute of Certified Public Accountants, American Society of Appraisers, Canadian Institute of Chartered Business Valuators, National Association of Certified Valuation Analysts, and the Institute of Business Appraisers.

¹⁵ http://web.nacva.com/TL-Website/PDF/NACVA_Professional_Standards_Incl_Review_Stnds_Effective_8-1-15_Final.pdf

18. For a conclusion of value, NACVA indicates that one must obtain and analyze applicable information, as available, pertaining to the following:
- a. The nature of the business and the history of the enterprise;
 - b. The economic outlook in general and the condition and outlook of the specific industry in particular;
 - c. The adjusted book value of the interest to be valued and the financial condition of the enterprise;
 - d. The earning capacity of the enterprise;
 - e. The dividend paying capacity of the enterprise;
 - f. Whether or not the enterprise has goodwill or other intangible value; Prior sale of interests in the enterprise being valued;
 - g. Size of interest to be valued and its control, liquidity and marketability characteristics;
 - h. The market price of interests or enterprises engaged in the same or a similar line of business having interests actively traded in a free and open market;
 - i. Hypothetical conditions appropriate for the circumstances; and
 - j. All other information deemed by the member to be relevant.

Insufficient Application of Valuation Standards, Lack of Evidence and Basis of Opinion

19. In regards to the elements per the NACVA guidance stated above, Mr. Kreitzman only includes the valuation date, valuation approaches, and intended users.¹⁶ As to the information and analysis required for a valuation conclusion, Mr. Kreitzman has either not adequately addressed items or has not addressed them at all. The Kreitzman Report does not address the following:
- a. Subject to be valued– The Kreitzman Report’s subject to be valued is the ACB. However, since the purchase of the ACB assets was to have occurred through an entity yet to be formed, the subject of the valuation has not been sufficiently addressed to ensure that the valuation elements and assumptions are reflective of the entity to be formed, such as the appropriate tax rate based upon the corporate structure. Since the entity was never formed it is impossible to have a clear definition of the subject to be valued;
 - b. Interest to be valued – Mr. Salomon proposed an equity structure for the business, but it was never agreed upon. Nevertheless, he utilizes the purported structure without sufficient evidence supporting the equity and future options he assumes;
 - c. Standard of value;
 - d. Premise of value;
 - e. Assumptions, limiting conditions and scope limitations;
 - f. Ownership size, nature, restrictions and agreements.

Mr. Kreitzman does provide some sources of information in his report. However, as noted throughout the report below, there are many areas in which no basis is provided, and we have not been able to locate it in the documents available. The Kreitzman Report does not address the limits of sources of data and any impact they would have on his calculations.

¹⁶ The adequacy of the valuation approaches are analyzed separately in this report in paragraphs 28 through 48.

20. The omissions in addressing elements and information necessary for an expert conclusion follow, including those areas most relevant in this matter.
21. A valuation analysis must consider both quantitative and qualitative factors. The qualitative factors are those referred to in the NACVA elements under “Other factors that may influence value when appropriate in the opinion of the member” and “[a]ll other information deemed by the member to be relevant” in the information necessary for a conclusion.

Qualitative Factors Insufficiently Analyzed

22. While Mr. Kreitzman refers to a partial list of qualitative factors in the “Business Analysis” section of his report, he does not properly set forth the impact of these items on the valuation he performs. By not considering adequately the qualitative factors specific to this matter that impact meeting the burden of reasonable certainty, the damages are speculative.
23. In paragraph 41 of the Kreitzman Report, Mr. Kreitzman outlines his understanding of the business at a very high level without determining the key drivers of the business value.
24. Mr. Kreitzman discusses barriers to entry in paragraph 42 of his report and indicates the ACB is capital intensive, which would provide a higher barrier to entry. Throughout his report, Mr. Kreitzman provides insufficient analysis on how the capital requirements would impact the business valuation on forecasted revenue. Also in paragraph 42, Mr. Kreitzman determines that “suspended mobile aerial cameras are still an emerging technology with possibility of early mover advantages possible” because of barriers to entry. However, the Kreitzman Report provides no substantiation for how first mover advantage impacts the analysis in any way except that it could potentially have an impact. Mr. Kreitzman had several documents available that reflect ACB had at least four competitors already.¹⁷ He performs no specific analysis of competitive impacts except that he states there are competitors. Mr. Kreitzman addresses opportunities in addition to ACB’s core business and states that “it is possible” these opportunities could generate large amounts of revenue, but he cannot estimate without additional information.

Qualitative Factors Ignored in the Kreitzman Report

25. One qualitative factor ignored by the Kreitzman Report is the availability of financing to purchase the ACB. Mr. Kreitzman does not address the availability of capital for the purchase of the business by PNC or others. Mr. Holowaty, an Advisor to PNC, stated in his deposition that PNC did not plan to entirely fund the purchase price of the ACB. He notes that they anticipated other investors and discussed the opportunity with some of these potential investors¹⁸, but nothing materialized.¹⁹ Mr. Holowaty reiterates later in his deposition that PNC did not intend to fund the

¹⁷ Exhibit 354: KSE/OC:052736-052765 at KSE/OC:052752.

¹⁸ One of the parties interested in the transaction was IMAX but they did not commit to help fund the investment. Deposition of Jeff Dean Holowaty, dated July 17, 2017, 111:8 to 111:17.

¹⁹ Deposition of Jeff Dean Holowaty, dated July 17, 2018, 51:2 to 52:23.

entire cash at the closure of the deal.²⁰ Further, Mr. Salomon agreed in his testimony that while other potential investors had been solicited, none of them had agreed to provide funding.²¹

26. The Kreitzman Report also does not discuss the impact of the Terms Sheet at issue. PNC originally submitted a Letter of Interest (“LOI”) on September 28, 2012.²² PNC and Mr. Salomon then signed, on behalf of an unnamed “Purchaser,” and provided a Term Sheet to Outdoor on February 26 or 27, 2013.²³ The Term Sheet states it is non-binding and it is my understanding that with the exception of the exclusivity agreement, is not legally enforceable. The Term Sheet specifically says that until such time as definitive agreements were signed, any party could terminate negotiations for any or for no reason, and without liability. Further, and as discussed in paragraph 37, the acquisition entity was never formed. The formation of “Newco” was a requirement in order to complete the deal but was never accomplished.
27. Another factor to consider in a valuation analysis is the sufficiency of management. This consideration would evaluate whether sufficient management is in place to support the financial quantification using forecasted projections. Mr. Holowaty stated in his deposition that Mr. Salomon would have been in a similar role at the new ACB if the sale had taken place.²⁴ Historical information suggest that Mr. Salomon’s performance did not result in positive financial results in his role as President of the ACB.²⁵ Comparing financial performance results prior and subsequent to May 2014 reflect that the company did better after Mr. Salomon’s departure. The Kreitzman Report fails to provide the necessary analysis of management at all or its sufficiency to achieve the projected results included in the Kreitzman Report. Further, there is no evidence that the management team had been determined and was in place and so adequacy of a non-identified management team, therefore, is speculative.

Opinion 3 - Even if you assumed incorrectly that Mr. Kreitzman met the standards for utilizing the valuation of a business as a measure of economic damages in this case, his approach is not supportable due to inappropriate valuation techniques, inclusion of option pricing (based entirely on shares and options proposed by Mr. Salomon) for a large portion of the damages making the valuation speculative, and misapplication of otherwise reliable sources of valuation data.

28. In order to perform a proper valuation analysis, all available relevant and reliable data for the analysis should be considered. Mr. Kreitzman did not use all of the relevant information available for his analysis. For example, the only deposition which was considered in the Kreitzman Report

²⁰ Ibid. 74:14 to 74:20.

²¹ Deposition of Nicolas Salomon, dated May 16, 2018, 270:5 to 270:21.

²² Exhibit 106.

²³ Exhibit 302: KSE/OC:000947-000950.

²⁴ Deposition of Jeff Holowaty, dated July 17, 2018, 47:3 to 47:7.

²⁵ First Supplemental Answers of Outdoor Channel Holdings, Inc. to Plaintiff Nic Salomon’s First Set of Interrogatories, dated May 4, 2018, Answer to Interrogatory Number 12.

was that of Scott Long, the 30(b)(6) deposition witness designated by KSE and Outdoor. However, he ignores relevant information in the depositions of other witnesses in this matter including Jeff Holowaty, Roger Werner, Cathy Lee, Tom Hornish, Tom Allen, James Martin, and Nicolas Salomon (his own client). This omission excludes relevant data that makes his analysis unreliable had he chosen to review them, or if they had been provided to him.

29. Regarding methodology of valuation, the Kreitzman Report identifies three methodologies that are typically considered when doing a valuation analysis – Capital Market, Income Method and Cost Method.²⁶ Mr. Kreitzman indicates that the Cost Method (also referred to as the Asset Approach) would not provide a reasonable indicator of value.²⁷
30. The Kreitzman Report conclusions do include the Capital Market approach but is included for illustrative purposes only because he is uncertain that the selected guideline companies are comparable. Again, he gives no supporting information for this statement for us to evaluate his claim²⁸ yet he includes it anyway.
31. Ultimately, Mr. Kreitzman relies on the Income Method, described as the earning capacity of the subject company, derived from past, current or projected earnings streams “discounted at a rate sufficient to satisfy the investment and business risk of ownership. The application of this approach is enhanced **when sufficient earnings history is available and relevant to the entity’s future** [emphasis added], in order to provide a clear indication of expected future performance.”²⁹ Although Mr. Kreitzman himself includes this definition in his report, his report contains nothing to address the historical earnings sufficiency and the relationship to future projections. In fact, as noted below, his report is internally inconsistent with this statement. At the time of potential purchase of the ACB, the company was part of a large, publicly traded company with a market capitalization of \$226.1 million as of March 28, 2013³⁰ and with infrastructure to support it. The “but for” company apparently would be a stand-alone entity containing only the ACB.
32. For the Income Method, Mr. Kreitzman relies upon projections for the business which were provided by Mr. Salomon, in his capacity as President of the ACB, to Mr. David Gluck³¹ at KSE.³² Mr. Kreitzman indicates “I believe these projections best reflect the business plan that would have been implemented absent the alleged breach of the terms of the term sheet and other wrongdoing alleged in this litigation.”³³ This is the only mention he makes of the reasoning for using what is by

²⁶ Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018, paragraph 51.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018, paragraph 52.

³⁰ March 31, 2013 was Easter Sunday, so the last day of trading in March 2103 was on Thursday, March 28, 2013. I used the weighted average common shares outstanding on the March 31, 2013 10-Q to calculate this amount.

³¹ David Gluck is Executive Vice President, KSE Media, LLC and KSE Outdoor Sportsman Group, LLC.

³² KSE/OC000413-000416.

³³ Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018, paragraph 46.

far the highest projections available and not remotely reflective of the business' historical operations and results.

Table 2 - Revenue Projections Comparison

Year Ended	Revenue Projected by Kreitzman³⁴	Revenue Projected by KSE³⁵	Actual Revenue³⁶
2014	\$ 15,500,000	\$ 11,153,000	\$ 12,567,000
2015	22,000,000	11,376,000	11,854,000
2016	35,000,000	11,604,000	11,443,000
2017	42,400,000	11,836,000	11,271,000

33. The Kreitzman Report projections include 17 systems in operation in 2013, increasing up to 78 in 2018.³⁷ For events, there are 228 in 2013 increasing to 844 in 2018.³⁸ Increasing the systems and events results in increased revenues from \$12.7 million in 2013 to \$52.2 million in 2018 resulting in an increase of compound annual growth rate (CAGR) of 33% in the projections versus 18% historical actual.³⁹ Mr. Kreitzman fails to address the fact that the historical earnings history is grossly inconsistent with the projected future earnings that has a growth rate almost double the historical rate of increase. Also, there is no semblance of the "but-for" stand-alone company compared to the reality post-merger with the ACB continuing as a segment of an established, and successful company in sports industry.
34. The actual ACB revenue for 2017 was \$11.2 million and only \$1.72 million through June 30, 2018⁴⁰ (note that the full year amount would have to consider seasonal aspects). Using the same percent of revenue for the full year of 2017 compared to the six months of January 31, 2017 through June 30, 2017, the extrapolated total 2018 amount is \$14.4 million.
35. The 2013 projections used in the Kreitzman Report include selling into the NFL teams extensively. Per Scott Long, the ACB only has two NFL teams as customers, even today.⁴¹ The ACB did have 17-18 games for Monday Night football under contract since 2013, but also lost ESPN games in that period of time.⁴² No explanation of the divergence is provided by Mr. Kreitzman.

³⁴ KSE/OC 000413-416. Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018, Table 6.

³⁵ Exhibit 360: KSE/OC:062679-062680.

³⁶ Exhibit 363.

³⁷ KSE/OC 000415.

³⁸ Ibid.

³⁹ Calculated based on the actuals used in Table 5 of the Kreitzman Report. KSE/OC 000414.

⁴⁰ Exhibit 363.

⁴¹ Rule 30(b)(6) Deposition of Scott M. Long, Kroenke Sports & Entertainment, LLC, dated September 5, 2018, 44:19 to 44:24.

⁴² Ibid., 49:24 to 50:13.

36. Historical margins were declining between 2004 and 2012⁴³, from a high of 66.1% in 2007 to 39.3% in 2012, reflecting an erosion to the gross margin even as the revenues increases. However, the projections in the Kreitzman Report reflect increasing gross profit margins from 40.8% in 2013 and 46.2% in 2018⁴⁴. No explanation is provided as to these conflicting trends in gross margin historically compared to the future estimated performance.
37. Adding to the speculative nature of the economic damages in the Kreitzman Report is the fact that much of the value allocated to Mr. Salomon is based not on the equity he may have had at the time of the purchase but on shares and options he might have received, based on his proposal, in the future. This compounds the unreliability of the analysis. PNC and Mr. Salomon never agreed on the “Newco” equity structure for the purchase of the ACB, let alone any shares and options that might have been allocated in the future.
38. The Federal Rules of Civil Procedure require an expert to provide his or her opinions and the bases therefore. There are many examples where we have been unable to determine the basis for Mr. Kreitzman’s projections and analysis, including the calculation of capital expenditures and working capital. These amounts are taken from the projections of Mr. Salomon, but based upon the limited explanation of the calculations, we cannot recalculate the amounts.
39. Mr. Kreitzman removes the KSE overhead charge from the projections without any substantiation as to his understanding of the nature of the services that were provided benefitting the ACB and what a stand-alone “Newco” would require to cover those same services.
40. Prior to 2018, legal fees are reimbursed by insurance at 85% and the reimbursement is reflected in the historical amounts. However, as of June 30, 2018, the year to date legal, accounting and professional fees is \$834,000⁴⁵ which is overstated compared to prior years because no insurance reimbursement is reflected. Mr. Kreitzman does not reflect any analysis of this fact nor provide an adjustment in his analysis.
41. Table 5 in the Kreitzman Report refers to revenue, gross profit, and EBITDA as “recurring”. No description of recurring expenses is provided. Mr. Kreitzman does not provide information on why he has limited his analysis to “recurring” and if there are any “non-recurring” expenses to consider.
42. The selected tax rate in the valuation analysis has significant impact on the resulting value. One scenario of the valuation in the Kreitzman Report uses a tax rate well below 40% based upon an effective tax rate for entertainments services companies, while most corporations in the United States face a marginal corporate tax rate of up to 40% or greater after consideration of Federal, state and local taxes. A corporation may pay an effective tax rate significantly below 40%. The lower rate would be driven by a number of company specific factors. For example, a company with

⁴³ Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018, Table 5. KSE/OC:000414.

⁴⁴ Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018, Table 6. KSE/OC:000415.

⁴⁵ Exhibit 363.

global operations may have income taxed at different rates in different locales; a company may receive tax credits or benefit from offsetting taxable income with net operating losses; or realize a reduction in taxes due to tax benefits of depreciation or amortization, all of which would vary by company and the impact of which may only be for a finite period of time. The Kreitzman Report relies upon the data from the Damodaran online without any further diligence to assess whether the selected tax rate is applicable in this case. Further, it is noted on the Damodaran website that *"In valuing a firm, should you use the marginal or the effective tax rates? If the same tax rate has to be applied to earnings every period, the safer choice is the marginal tax rate because none of the reasons noted above can be sustained in perpetuity"*⁴⁶.

43. Mr. Kreitzman estimates a Weighted Average Cost of Capital ("WACC") to apply in present valuing the cash flows with the discounted cash flows analysis. In estimating a WACC, the Capital Asset Pricing Model ("CAPM") is one method used to determine the estimated cost of equity. In using this approach, a valuation appraiser will typically give consideration to a "small – stock premium" and "size premium", to reflect the impact of the size of the business on the risk of the cash flows. It should be noted that typically size premiums are used most often by valuation analysts, to reflect the excess returns required on smaller securities after accounting for the systematic risk captured in the beta.⁴⁷ Data on size premiums is published in the Ibbotson SBBI Valuation Handbook and provides estimated size premiums determined by the company's equity. The Kreitzman Report shows no consideration of such data and the impact an appropriate size premium would have on the estimated WACC. In this calculation, the small stock premium usually refers to the size of the business, but he provides no explanation for the use of the small stock premium considering that the use of the business size may have increased the rate.
44. The Kreitzman Report does not reflect adequate consideration of a company specific risk premium required in valuation standards to capture unsystematic risks of the particular industry and/or the company, including projection risks. Projection risks would include risks inherent within the forecast which may include, but not be limited to, risk in acquiring market share, achieving stated revenue through new customer acquisition and strategic partnerships and alliances, and achieving margin growth through operating efficiencies and fixed cost leverage.
45. There are multiple methodologies that can be considered to estimate the cost of equity in calculating the WACC, or to help corroborate the estimated WACC. No other approaches to calculating WACC were considered by Mr. Kreitzman. Further, venture capital rates of return can also be relied upon to assess risk and return commensurate with the stage of the business. Indicated venture capital rates of return vary from 20% up to 100% depending on the stage of development⁴⁸. In other words, Mr. Kreitzman describes the ACB as an "emerging business" and it was to be funded by private equity. A much higher discount rate would be indicated by such analysis, reducing the damages in all scenarios.

⁴⁶ http://pages.stern.nyu.edu/~adamodar/New_Home_Page/valquestions/taxrate.htm

⁴⁷ James R. Hitchner, *Financial Valuation, Application and Models*. 3rd Edition. Pg. 202.

⁴⁸ *Valuation of Privately Held Company Equity Securities Issued as Compensation*, Practice Aid, Working Draft, 2012, American Institute of Certified Public Accountants, p. 114.

46. The Kreitzman Report uses the Lazard Freres report without having sufficient information to evaluate its appropriateness for use in a damage quantification.⁴⁹ Without the Lazard Freres report, no analyst would have sufficient information to assess the assumptions included therein. Absent that information, it is inappropriate to consider it to value any economic damages in this matter.
47. The offer by PNC and Mr. Salomon should be the most relevant valuation to be used in estimating any purported economic damages in this case as it was prepared contemporaneously with information available at the time, and was made by Mr. Salomon as then President of the ACB. The offer was up to \$4.05 million, including \$3.65 million at closing, and potential litigation and royalty payments as described in the Term Sheet. Although the offer was included in one of Mr. Kreitzman's damage analyses in his report, he does not give it any more significant weight than the other scenarios. Additionally, the 2013 offer was not the only one made by Mr. Salomon; in October 2008 he provided an offer of only \$2 million for the ACB.⁵⁰ Mr. Kreitzman does not consider this fact.
48. The AICPA practice aid on the Valuation of Privately-Held-Company Equity Securities Issued as Compensation (the "AICPA Practice Aid") provides guidance on estimating the fair market value of common stock of private companies. The AICPA Practice Aid indicates that the Black Scholes option-pricing method ("OPM") is most appropriate in situations in which the enterprise's value depends on how well it follows an uncharted path through its various opportunities and challenges. However, proper consideration needs to be given to the capital structure of the business and the rights and preferences of each share class. The OPM treats the securities in a company's capital structure as a series of call options on the enterprise's value, with exercise prices based on the liquidation preferences and conversion values of the securities. Value is allocated to the subject interest based upon the order of liquidation and the resulting incremental call option values. It is unclear in the Kreitzman Report how the order of liquidation and rights and preferences of each share class are considered. Further, given that the equity structure was never finalized, it is speculative to use any method, as there is uncertainty in what the rights and preferences would be for each share class, a key assumption to allocating value. Inconsistent with Federal rules, no information is provided by Mr. Kreitzman that allows us to recreate his analysis from his report.

⁴⁹ Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018, paragraphs 72 to 75 and tables 16 to 18.

⁵⁰ SALOMON500073.

Opinion 4 - The disgorgement of Outdoor profits in any amount, let alone of \$58.14 million, has not been established, through the necessary fundamental business valuation or forensic accounting analysis by Mr. Kreitzman with a reasonable degree of certainty given that there is no analysis of the factors that would be required before rendering such an opinion. It assumes disgorgement would be an available remedy, and is based on a thoroughly flawed premise that the entire increase in purchase price between InterMedia's first offering price and KSE's last was due to the ACB. Additionally, the methodology premise is also flawed completely since the increased offering price for the merger did not benefit Outdoor, but the shareholders who held the stock at the time of the transaction, so there was no benefit by Outdoor which could be disgorged. This renders the opinion speculative and unreliable. It also does not reflect in any way the profits achieved post-merger with KSE.

49. Mr. Kreitzman's short articulation for the \$58.14 million disgorgement amount is based upon the difference in sales price between the original InterMedia agreement for \$8 per share and the KSE merger agreement for \$10.25 per share. The InterMedia agreement purportedly "respected the sale of the Aerial Camera Business"⁵¹ presumably referring to the hypothetical "Newco" to be created by PNC and Mr. Salomon. Meanwhile the KSE merger agreement, according to Mr. Kreitzman, included all of Outdoor, including its subsidiaries. Therefore, Mr. Kreitzman attributes the entire increase of \$2.25 per share to the ACB. The total amount of this difference on 25.84 million shares equals the \$58.14 million in additional profits according to the Kreitzman Report.
50. The Kreitzman Report fails to provide any analysis of the competing offers and what differences drove the value by either party. There are no valuations to evaluate what those drivers were. These additional steps are necessary to determine the appropriateness of the methodology. Without the analysis, there is no basis on which to use the methodology because he has not established a causal link between the alleged wrongful actions and the economic damages calculated.
51. Mr. Kreitzman also provides no such analysis or understanding of the factors driving the \$8 or \$10.25 per share value by InterMedia and KSE, respectively, nor the other offers that were made throughout the negotiation period. Based on the limited description provided by Mr. Kreitzman, the only difference he assumes is the inclusion or exclusion of the ACB and without explanation infers that the ACB drives the entire difference. By doing so, Mr. Kreitzman fails to recognize facts and data that indicate that the difference in the values is not related to the ACB.
52. Mr. Kreitzman's flawed analysis compares the original bid of \$8.00 per share to the \$10.25 per share bid by KSE to determine his disgorgement amount. However, he failed to take into account that on May 3, 2013 InterMedia increased its offer to \$9.75 per share⁵². Given that Mr. Kreitzman's logic, however flawed, is that the InterMedia offer excluded the ACB, it would have consistently

⁵¹ Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018, paragraph 81.

⁵² Schedule 14A, May 6, 2013, Outdoor Channel Holdings, Inc.

excluded it in the \$8.00 and \$9.75 per share offers. Therefore, InterMedia increased its offer by 22% without any change in the assumptions related to the ACB.

53. Another flaw in the disgorgement of Outdoor profits is that Outdoor itself did not receive the benefits which the Kreitzman Report seeks to disgorge. The proceeds of the transaction price at any level inured to the shareholders of Outdoor, at the time a partially publicly traded company with 41% of the shares held private. Therefore, there is no basis for the opinion since the benefit to disgorge any amount related to an increased offering price does not exist.
54. The ACB was a very small business segment within the total stock purchase contemplated by the InterMedia and KSE offers. It is unreasonable and unsupported to infer that the ACB would drive this much difference in values. The data reflects that for the three years prior to the sale of the business, 2010 to 2012, the ACB division was only 11%, 12% and 16%, respectively, compared to total Outdoor Channel revenues. See Table 3 below for the ACB revenues compared to the Outdoor revenues.

Table 3 - ACB and Outdoor Revenues

Year Ended	ACB	Outdoor	% of Total Outdoor
2010 ⁵³	\$ 9,140,000	\$ 83,342,000	10.97%
2011 ⁵³	8,663,000	71,855,000	12.06%
2012 ⁵⁴	12,018,000	77,322,000	15.54%

55. To further illustrate this point, James Martin, President and CEO of KSE, testified that he never even discussed the term sheet for the sale of the ACB with Mr. Kroenke because it was not material.⁵⁵ In response to a query to Roger Werner, Outdoor CEO until January 2012, regarding his interest in investing with Mr. Salomon and PNC, he indicated that his interest was not particularly high because the ACB was a low margin, capital intensive business that was challenging.⁵⁶
56. Despite the inference by Mr. Kreitzman that the ACB drove the increase in offers by the two competing companies for the stock of \$58.14 million, evidence indicates that there was no valuation done of the ACB during the period from February 27, 2013 to May 16, 2013.⁵⁷ If in fact the ACB was the driver to the offers being made, it is unlikely a valuation would not have been performed.

⁵³ Form 10-K, December 31, 2011, Outdoor Channel Holdings, Inc.

⁵⁴ Form 10-K, December 31, 2012, Outdoor Channel Holdings, Inc.

⁵⁵ Deposition of James A. Martin, dated August 30, 2018, 85:15 to 86:5.

⁵⁶ Deposition of Roger Werner, dated June 7, 2018, 68:7 to 69:4.

⁵⁷ Rule 30(b)(6) Deposition of Scott M. Long, Kroenke Sports & Entertainment, LLC, dated September 5, 2018, 119:25 to 120:15.

57. Absent a valuation of the ACB at the time, Mr. Kreitzman could have considered the bids which were submitted in an effort to purchase the ACB. PNC and Mr. Salomon, with the access to contemporaneous information at the time, submitted a bid valuing the purchase of up to \$4.05 million.⁵⁸ Other contemporaneous offers included offers from Aspen Group on February 24, 2013⁵⁹ and SF Captial Group on February 26, 2013⁶⁰. Both of these offers were for \$4.5 million. No explanation or reconciliation is provided in the Kreitzman Report for the 13 to 14 times increase in value in the purchase by KSE.
58. During the course of this proceeding, Mr. Salomon requested and received in response to his interrogatories a chart of EBITDA and Unlevered Free Cash Flow for the years 2009 through 2017. For pre-sale period (2009 through 2012), cumulative EBITDA and Unlevered Free Cash Flow was (\$2,323,000) and (\$5,613,000), respectively. Post sale for the period 2013 – 2017, the cumulative EBITDA and Unlevered Free Cash Flow was \$5,568,000 and \$212,000 respectively. Mr. Kreitzman does not explain how such a low performing company could create \$58.14 million of value to Outdoor.
59. Mr. Kreitzman's failure to consider these factors does not establish a causal link on which Mr. Kreitzman can establish any amount under disgorgement, and there certainly is no substantial analysis to support the sum of \$58.14 million. In fact, the evidence within the Kreitzman Report for the purported value of the ACB in the benefit of the bargain damages section of his report, which is itself flawed and unreliable, is completely inconsistent with this amount, reflecting no more than \$1,023,809⁶¹.



October 12, 2018

⁵⁸ Exhibit 302: KSE/OC:000947-000950.

⁵⁹ Deposition of Thomas D. Allen, dated June 20, 2018, 43:14 to 45:8. And related exhibit number 122.

⁶⁰ Ibid., 48:21 to 49:24. And related exhibit number 123.

⁶¹ Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018, paragraph 7.



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EXPERIENCE

Karyl Van Tassel, Managing Director in the Houston office of BDO, has over thirty years of experience providing dispute and investigative services. She works with clients to address financial damages, forensic accounting, economic and valuation challenges they face in a wide variety of litigation and investigation matters including securities, intellectual property, breach of contract, antitrust, lender liability, fraud, forensic accounting and wrongful terminations.

Karyl has a proven track record of working with clients to deliver high-value solutions to their most complex litigation and financial challenges. Audit committees and companies have retained her to assist in investigating allegations of accounting and financial improprieties. She has appeared before the Department of Justice and the Securities and Exchange Commission to deliver investigation findings. Court appointed receivers have also relied on her to provide financial consulting services.

Prior to joining BDO she held various positions at international accounting and consulting firms, including as a partner at PricewaterhouseCoopers (PwC) in the Advisory Forensic Services practice where she was also the Forensic Energy Sector leader based in Houston. Prior to joining PwC, she was a Senior Managing Director in the FTI Consulting Forensic and Litigation Consulting practice. She was a former partner in KPMG's Forensic Dispute Advisory Services practice as well. Early in her career she provided audit and tax services to oil and gas companies, manufacturing facilities, high technology companies, auto dealerships, construction clients and governmental agencies. Karyl has also provided accounting services and investment analysis to financial institutions.

Forensic Accounting

- Retained by court appointed receiver in one of the largest alleged Ponzi schemes in the U.S to lead the forensic accounting investigation and data preservation efforts. Led a team of over 100 professionals from the inception of the receivership to identify assets of the financial institution and more than 100 related companies, trace cash movements between the entities, monetize assets for investors, as well as to preserve information, data and assets of the estate. She assisted in the establishment of the claims process for several thousand investors. Assisted various regulators including the DOJ, SEC, IRS, and US Postal Service among others by providing information obtained during the course of the investigation. Provided over forty declarations and affidavits in cases pending in several domestic and foreign jurisdictions. Provide testimony in deposition and hearings related to sources of assets, the characteristics of a Ponzi scheme, cash tracing and sources of funds within the various organizations.
- Retained by court appointed receiver to investigate and track \$85 million of funds embezzled by the CFO of a Texas energy company. Searched the company records to determine the amount of the embezzled funds, and determine the various schemes used to remove the funds from the company. After tracing the amount removed from the company, then traced assets through multiple shell companies and personal bank accounts, utilizing accounting information and electronic data obtained through email, hard drive and server sources. Worked with receiver on monetizing assets recovered.



- Performed various forensic “audits” based upon contract requirements, regulatory requirements, and/or standard industry practices for energy sector clients. These involve preparing direct expert and rebuttal reports, and testifying in arbitration and trial. These involve royalty disputes, analysis of joint interest billing (JIB), take or pay contracts, as well as other contract and regulatory issues.
- Involved in various investigatory matters related to compliance with Foreign Corrupt Practices Act (FCPA), including assisting a monitor appointed under a deferred prosecution agreement of a company to analyze accounting and internal control procedures. Prepared work plan for compliance testing and directed site visits, conducted interviews and assisted in preparing report of findings. As a result of our work, have reported to head of enforcement at the Department of Justice. With the three-year term of the monitorship, have ongoing responsibilities for follow up with the company and oversight of responses to monitor’s requests and reported findings, as well as follow up site visits for each year.
- Retained by audit committee of a drilling company to investigate issues related to potential FCPA violations. One issue involved potential payments by the company to paramilitary groups in a Latin American country for protection of its rigs against attack. Work involved determining whether payments were made by false invoices from an authorized vendor, the authenticity of the endorsements and bank accounts used for payments to these vendors, and the background investigatory work to determine ultimate recipient of funds. Additionally, investigated payments made in a West African country to a freight handler and potential governmental authorities. Analyzed invoices and payments, traced cash used to fund payments to the various entities to determine source of the funds, determined completeness through general ledger testing, and compiled findings for reporting to the Department of Justice.
- Retained by the audit committee on matters related to allegations of round trip trading in the energy industry. Assisted in providing multidisciplinary teams to extract data, analyze trades, document risk management practices and analyze appropriate accounting treatment, including potential restatement. Reports provided to audit committees to assist them in responding to SEC inquiries and investigations.
- Retained by company to perform analysis of costs incurred for provider of energy in submitting a claim in the refund of overpayments related to the California power settlements. Reviewed regulatory filings to determine if costs and methodologies complied with FERC guidelines and state mandates. Analyzed source documents as well as documenting the methodology utilized for compiling the information.
- Retained by counsel for a special committee of a publicly traded software company to investigate allegations of potential backdating of stock options. Led a team of accounting and electronic evidence personnel to assist in acquiring and analyzing written and electronic information related to the stock option process and individuals involved. Worked extensively with counsel analyzing accounting issues related to measurement dates and the appropriate accounting of stock grants for new hires, new account acquisition, employee ranking, compensation in lieu of cash, and sales incentive plans. Analyzed appropriate accounting treatment and estimate of annual financial impact based upon alternative measurement dates. Reported results to Board of Directors and auditors of the company.
- Retained by the audit committee of an electronics company to investigate allegations by the SEC related to revenue recognition issues, overstatement of inventory and property, plant and equipment and self-dealing by top level executives. Company eventually settled with the SEC and announced restated financial statements.
- Analyzed historical rates of return for a variety of mutual funds and equity investments to determine the impact of various investing options related to the assets of a trust. Compared actual returns to several indices to determine the difference and the potential damages allegedly incurred by the trust.
- In a securities matter related to the mining industry, analyzed the impact of the accounting and financial disclosures on the stock of a company. Analyzed various returns on equity investments for guideline companies in the industry as well as equity indices to measure impact of announcements and disclosures on the company stock.



- Retained by a hospital chain to analyze billings to Medicaid and insurance providers to determine if billings were appropriate based upon contractual provisions and consistent with the patients file and diagnosis. Worked with multidisciplinary team to consisting of computer specialists to retrieve data, database specialists to analyze information and medical personnel to review medical files.
- Retained to analyze various factors and transactions in matters asserting alter ego claims. Involved in a variety of matters where we provided detailed analyses of corporate governance, financial operational and control factors to determine the extent to which the information would indicate the existence of separate entities.
- Involved in analyzing various complex financial and accounting transactions regarding alleged improprieties in a variety of industries, either for internal investigations or litigation.
- Analyzed accounting treatment of revenues and related party disclosures for a defendant in a securities matter. Software company allegedly had overstated revenues by inappropriate application of accounting principles and improperly disclosed various related party transactions.
- Analyzed and traced assets between various related and affiliated companies, which involved complex accounting treatments. Traced cash and other assets to offshore companies. Testified in hearing for contempt of court regarding the disposition of certain cash receipts subsequent to the issuance of a temporary restraining order that limited the transfer of assets.
- Analyzed the alleged fraudulent activities of two major auto body repair shops for an insurance company. Determined the overall profitability of the auto body repair shops compared to the industry as a whole. From a large production of documents, also determined the availability of financial documents from the body shops, and their relationship to and substantiation of the results of inspections performed on vehicles after the repairs were completed. Assisted the economist in regard to the total business conducted over a 15-year period and extrapolated sample results to the entire population.
- Retained by a lender to the defendant in a case involving an alleged Ponzi scheme in the computer hardware industry. Analysis included determining the flow of transactions in the company between actual business operations and alleged fraudulent activities. Utilized large-scale database application to track transactions within the company, to the bank and to the potential investors. Analyzed the companies banking transactions to determine if the bank had allowed a "float" on the account, which the trustee alleged to be an additional loan to the company from the bank. Engagement resulted in settlement with company trustee.
- Analyzed the billings of a construction company related to the renovation and partial construction of a residence. Analyzed application of percentage of completion in monthly billings to determine overcharges throughout a three-year construction period.
- Analyzed the costs of producing a compact product for shipping hazardous materials. Determined if improper allocations were made based upon cost accounting theories, resulting in overcharging to clients.

Energy Industry

Having led forensic and dispute practices in both Denver and Houston, Ms. Van Tassel's thirty-year career in accounting and consulting has continually focused on the oil and gas sector, including global integrated oil and gas companies, oil field services, refineries, petro-chemical and mid-stream companies. She has provided auditing, consulting, expert witness and investigatory services for the industry.

- Early in her career, she audited various oil and gas companies, involving knowledge of oil and gas accounting in all facets of the audit. Stemming from this audit experience and with knowledge attained by subsequent accounting matters, she has also provided consulting and expert witness services on accounting issues, including COPAS, Generally Accepted Accounting Principles (GAAP), International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS).



- Throughout her career, she has been retained by major independent oil and gas companies to analyze royalty claims brought by various leaseholders on properties in Louisiana, Oklahoma, Texas, Kansas and Colorado.

Select case examples include:

- Analyzed joint-interest-billing processes, controls and accounting to determine whether sufficient systems, policies and procedures were in place to provide accurate JIB accounting for multiple parties.
- Analyzed the costs related to gas gathering systems in a dispute by joint venture partners related to technical system issues.
- Analyzed economic damages and provided financial analyses in many contract disputes for oil and gas and related companies including take or pay contracts, gas contract price revisions and JIB accounting issues.
- Analyzed damages sustained by a company due to imbalances in production of petro-chemicals. Provided various analyses regarding different economic outcomes based on proposed business settlements between the parties.
- In the Eagleford shale play, retained by global energy company to analyze contractual agreements with joint venture partners related to thousands of leasehold interests, including costs to obtain leases, drilling and operation costs, royalty payments and tracing cash distribution.
- Provided services to major energy company in regards to the issues in the California energy grid cases for compliance with regulatory issues and allegations of impropriety in delivery contracts.
- Consulted with companies on managing and implementing systems to appropriately monitor leasehold interests, royalty payments and contractual terms.
- Provided services to various companies and boards of directors related to round trip trading in the oil and gas industry, including analyzing back, middle and front office practices to determine potential control weaknesses and volume of potential "round trip" transactions and impact on financial reporting. Presented findings to the Department of Justice and Securities and Exchange Commission.
- Performed an investigation into the accounting for oil and gas reserves by a major independent upstream oil and gas company.

Contract Disputes

- Analyzed payments made under agreements between joint venture partners or under third party contracts for the pricing of natural gas, oil, chemicals, feedstock and other products in the energy sector.
- Analyzed the payments made under a treaty whereby client ceded obligations under a reinsurance agreement in the variable annuity business. The allegations involved whether the contract was wrongfully terminated if underpayment of premium had not been made by insurance company to reinsurer. The issues involved included obtaining an understanding of the payment terms for the reinsurance coverage over an extended period on reinsurance of the guaranteed minimum death benefit of variable annuity life insurance policies. Led a multidisciplinary team working with large volumes of transactions data. Team included data analysis and electronic discovery specialists for the extraction of data over an extended time period with millions of transactions. Also, worked with actuaries to understand variables assumed in their analysis of the book of business and with underwriters to understand policies and procedures. Testified in arbitration that client had not underpaid over the period of time at issue in the matter.
- Analyzed the economic damages in a breach of contract and tort matter between client insurance company and a third-party administrator. Analyzed the damages alleged by plaintiff's damage expert and provided rebuttal analysis of damages. Issues in the damage calculation related to valuation of a book of business for dread disease policies and calculation of amounts owed under a contract.



- Analyzed the economic damages sustained by an investor in a failed joint venture in a urea plant in Columbia. Opinion included a valuation of the business enterprise as of the date of the alleged breach, involving various analyses of the urea market, the prospective operation results and ability to attract lenders.
- Analyzed the lost profits sustained by a petrochemical company related to an alleged breach of a joint venture/operations agreement. Issues related to imbalance in the manufacturing facility due to inappropriate levels of various feedstock to the plant. Inability to maintain contracted levels of product forced inefficient plant operations, decreasing profitability.
- In a breach of contract dispute, analyzed the economic losses sustained by the creator and distributor of personal care products. Analysis included working with a marketing expert to determine effects of demographic differences of consumers on buying habits and its impact on the subject company's profits and long-term viability.
- Analyzed the economic damage claim of a producer of accounting software. Provided testimony with regard to the out-of-pocket costs incurred for an internally developed product, which was used to replace the component, which the defendant did not deliver. Also analyzed the lost profit damages under a first to market theory.
- Analyzed the lost profits of a used car dealership related to a breach of contract. Analyzed industry margins compared with subject and other market conditions.
- Analyzed the economic damages of an exclusive distributor of sporting good products due to product defects. Calculated the economic impact to the distributor over an eight-year period, including lost profits, carrying costs of inventory and other incremental costs. Project necessitated analyzing the performance of over forty products and determining the cause factors impacting the diminution of profits.
- Determined the lost profits allegedly sustained by a provider of programming to the hotel industry, related to a breach of the right of first refusal for a satellite transponder. Coordinated industry experts in various areas including hotel/motel management, advertising, consumer demands, economic trends, cable programming and venture capital availability to analyze the feasibility of the programmer's claim.
- Calculated the economic damages, including lost profits and incremental expenses, in the largest asbestos case in Colorado for a major suburban shopping mall.
- In a contract dispute, determined the value of the restaurant operations included as part of a major Colorado ski resort. Analyzed market trends and restaurant industry comparables for use in the valuation. Also used industry information to benchmark against actual results, to determine management effectiveness.
- Analyzed the value of a franchise fast food establishment related to a breach of contract. Engagement included analyzing various offering circulars for franchises to determine relevant value drivers for similar franchises. Analyzed demographic data related to California communities included in franchise agreement.
- Analyzed a lost profit claim related to a chain of fast food restaurants in a breach of contract matter. Analyzed store-by-store financial metrics to determine average store results compared to subject stores. Analyzed economic and demographic trends in areas adjacent to subject stores.

Intellectual Property

- Analyzed the economic damages allegedly sustained by companies alleging theft of trade secrets in the energy, high tech manufacturing, and telecommunications sectors. Calculated losses on a variety of bases based upon the circumstances of the case including the Plaintiff's losses, Defendant's profits (unjust enrichment), reasonable royalty and other methods for payment of property misappropriated. Performed detailed analysis of client overlaps, working with industry experts as needed.
- Analyzed the economic damages sustained by a construction product manufacturer due to an alleged patent infringement. Also analyzed the lost profits of the defendant company in a counterclaim for breach of contract. Analyzed market potential for the product, impact of non-infringing substitutes, marketing and distribution channels and other factors impacting sales volume and expenses.



- Analyzed the economic damages sustained in a patent infringement matter by an inventor in the sporting goods industry. Detailed analysis including addressing Georgia Pacific factors related to determining a reasonable royalty. Opinion included market royalty rates, royalty rates on other company products, incremental gross profit on patented property, and profit split method.
- On a consulting basis, analyzed the damages of a producer and global marketer of rubber-based products. Allegations included patent infringement trademark infringement, copyright violations, theft of trade secrets and fraud. Claim for damages exceeded \$1 billion. Working for the defendant, analysis included impact of market and distribution channels on lost profits as well as reasonable royalty calculation.
- Analyzed the economic damages of one of the largest software companies in the world related to a patent infringement case. Analysis included determining product gross profitability for those alleged to have infringed the property. Also assisted in analyzing the appropriate royalty rate and allocating the revenue to the patented and nonpatented features of the product. Case settled for \$100,000,000 less than claim.
- Analyzed the damages in a patent infringement matter related to modular cells for prison units. Engagement included a detailed analysis of a reasonable royalty, based in part upon the Georgia Pacific factors. Reasonable royalty was based upon market derived data, established rates by licensor and licensee, prior licensing history between the parties and analytical analysis of various profit measures.
- Analyzed value of patented technology for various biomedical devices held by a company for a potential acquisition. Analyzed the patented and nonpatented products to determine synergies and purchase drivers between the products since only a portion of the portfolio of products was to be purchased. Also considered impact of governmental approval process on value of patented properties that were still in clinical trials. Determined range of values based upon reasonable royalties obtained in the market place and from other analytical measures.
- Analyzed the value of patented technology in a laser device used for noninvasive surgeries and dental work for a transfer to an off-shore entity for tax purposes. Engagement included analyzing the profit stream from the laser device as well as market derived rates.
- Analyzed the range of reasonable royalty for physicians developing a drug for cancer treatment. Patented property was related to improving efficacy of radiation treatments. Using analytical data and market derived rates, assisted in negotiating license with a biotechnology company.
- Analyzed the economic losses in a matter involving the alleged infringement of trademarks for a line of personal beauty products. Testified for the defendant in deposition regarding the economic damages sustained as well as presented counter claim testimony. Issues included analyzing relevant markets for personal care products, product survey information regarding product characteristics influencing buyers' decisions, internet advertising, and product distribution channels for impact on damage analysis. Case resolved in settlement.
- Analyzed the lost profits sustained by the developer of a sporting good product resulting from an alleged trademark infringement. The economic damages were calculated both as the lost profits of the developer of the product based upon its own historical results as well as analyzing the profits of the alleged infringing entity. Also analyzed damages related to the cost of corrective advertising in conjunction with an advertising expert.
- Testified for the defendant in an injunction hearing regarding the nature of the advertising revenue as the primary source of income, the overlap in advertising between the "webzine" and magazine and the potential impact on economic damages. Case related to an alleged trademark infringement by a "webzine" of a magazine title.
- Analyzed damages of plaintiff related to disparagement of Ameritech Corporation's management of the alarm company post-acquisition. The case related to the alleged infringement of a trademark for a burglar alarm company purchased by the plaintiffs. Analyzed detail records of clients for overlap caused by clients subscribing to the defendant company due to disparaging information supplied to Ameritech clients in violation of a non-compete agreement as well as infringing use of trademarks.



- Performed royalty examinations for a multinational software company. Supervised multilingual and disciplinary teams to perform royal “audits” in several countries and domestically. Developed regular maintenance program for ongoing audits of contracts on a scheduled basis. Resulted in recovery in excess of \$10,000,000 and assisted in favorable renegotiations with joint venture partners.
- Performed a royalty examination in a dispute between a software producer and distributor. Calculated the economic damages allegedly sustained by the software producer due to the alleged under reporting of software sales. Testified in arbitration regarding the results of our findings.
- Performed royalty examinations of five different licensees under contract “audit” rights for a developer of software. Worked with clients and licensees to resolve disputes, recovery of more than \$1,500,000, and renegotiation of contracts.

Insurance Claims

- Analyzed the claim by a hospital related to the flooding of the facility. Engagement involved detailed analysis of the impacted departments and the financial impact of substituting less profitable services for higher margin services due to inability to provide full service medical operations. Also analyzed specific incremental staff costs incurred during the flood and cleanup period.
- Analyzed and assisted in preparing the claim of a large food manufacturer related to an explosion and fire in its primary manufacturing facility. Claim exceeded \$100 million, which was settled expeditiously.
- Assisted risk management officer in analyzing a claim related to a fire at a resort community. Claim involved business interruption for a variety of resort functions as well as property losses.
- Assisted in preparing the claim for a large training facility related to computer outages from lightning strikes. Analyzed business interruption claim and collateral losses. Claim eventually was settled in litigation.
- Assisted in claim related to a power outage for several businesses related to extended power outages related to a major train derailment.

Post-Acquisition Disputes

- In a post-acquisition dispute, analyzed the results of certain long-term contracts obtained as part of a purchase of an international engineering firm. Analyzed the accounting treatment and financial results of the contracts, both pre- and post-acquisition, and the impact on the valuation of the business.
- Analyzed the lost profits due to alleged fraudulent misrepresentations in a purchase of a restaurant chain. Analysis included store-by-store data of prospective revenue and profitability, compared to those actually achieved. Analyzed market and economic trends in regions in which the restaurants operated to determine impact on profitability and sales from issues unrelated to the alleged misrepresentations.
- Served as an arbitrator in a dispute involving the closing balance sheet working capital provisions of a purchase agreement. In the medical insurance industry, analyzed the proposed adjustments to working capital including accounts receivable, reserves for losses and contingent liabilities.
- Prepared a claim of working capital adjustment related to the closing-balance sheet provisions of a purchase agreement in the computer storage industry. Analysis included inventory accounting, accounts receivable and deferred revenue.
- Analyzed the propriety of accounts receivables included in the representations and warranties in the purchase of an environmental services company. Allegations involved intentional overstatement of accounts receivable later determined to be uncollectible by the purchaser.



Construction Industry

- Retained by the audit committee of Fortune 500 company to analyze historical accounting issues related to accounting for long-term construction contracts. Issued report and had meetings with the SEC to discuss findings and accounting issues.
- Analyzed the lost profits to a large engineering firm related to the inability to complete the construction of a polystyrene plant in the Middle East. Analysis involved analyzing the percentage of completion methods and determining profit at time of invasion, compared to projected profit had the event not occurred. Claim was submitted to the neutral arbitrators in Switzerland.
- Provided rebuttal analysis of a \$20 million claim for lost profits in a construction claim for an Arkansas highway project. Addressed the issues of causation as well as analyzing the underlying assumptions of the lost profit claim. The indirect claim for lost profits was dismissed on summary judgment, in part based upon our financial analysis of the causation issue.

Telecommunications

- Analyzed the economic damages of a company that terminates traffic for other telecommunications companies who provide a variety of services to end-users. In a contract dispute with one of its clients, analyzed the lost profits as well as the diminution in the value of the business. Analysis included determining network capabilities in regions covered by the agreement during peak and off-peak time periods to determine availability of volume due to switching constraints.
- Analyzed the economic damages asserted in a class action matter against a RBOC. Analysis included detailed records for thousands of customers asserting held order claims over a six-year time period.
- Downloaded data records related to customer orders, service delivery, billing and customer data. Analyzed relevant tranches of class participants and related damages.
- Analyzed payments made by a major telecommunications company to a switching vendor over a five-year period of time. Based upon contract terms, worked with the company's engineers to determine how the provisioned switching products impacted the billing requirements under the contract. Analysis related to whether charges made by switching vendors were in excess of contract terms. Analysis resulted in multi-million dollar settlement with vendor.
- Analyzed payments made by a major telecommunications company to a single source construction vendor. Issues related to the propriety of charges incurred compared to services delivered over a period of several years. Analysis was used for negotiating a new contract with the contractor.
- In a contract dispute assisted in analyzing the viability of a "C-Block" license holders' business plan and the reasonableness of the company valuation. Researched "C-Block" license auction values and results of operation of "C-Block" auction recipients.
- Oversaw an engagement in which 200 competitive local exchange carrier (CLEC) contracts were analyzed to extract compliance issues for billing and provisioning by a major telecommunications company. Results provided service representatives with information for communication with CLEC's.

Miscellaneous

- Prepared analyses of lost wage claims, lost profit claims and incremental costs incurred in various personal injury matters. Based upon the opinions of rehabilitation specialists and career counselors, prepared damage analysis based upon the estimated reduction in worklife expectancy, decreased earnings potential or incremental costs incurred related to the alleged injuries.
- Analyzed value of businesses conveyed in pre-bankruptcy transactions related to claims of fraudulent conveyance.
- Assisted in economic analyses related to wrongful termination matters, including lost wage and benefit claims.



- Valued the stock of closely held businesses in a dissenting shareholder action, lender liability matter, condemnation proceeding and various marital dissolutions.
- Valued the stock of a closely held chain of restaurants for the purpose of spinning off certain restaurants to form a new company.
- Valued the stock of the largest oyster processing company in the world for a northwest financial institution. The bank had acquired the company through foreclosure and required the valuation as part of its internal procedures required to sell the entity to an outside party.
- Valued a 50 percent ownership interest in an alarm monitoring company for a buyout of the partial owner's interest.

Publications

- Coauthor of "Calculation of Economic Damages in Commercial Litigation," Total Tape Publishing Company, Tampa, Florida, 1990.
- "Valuing Intellectual Property: The Science and the Art," The Colorado Lawyer, August, 1997.

Speaking Engagements

Addressed various state and local bar associations as well as other continuing legal education providers on the following matters:

- Valuation Intricacies
- Financial Statement Analysis and Presenting Financial Data at Trial
- Use of Economic Experts in Commercial Litigation and Case Management
- Valuation Issues in Fraudulent Conveyance Matters
- Valuation in a Cram Down Bankruptcy Proceeding
- Valuation of Businesses in Mergers and Acquisitions
- Valuation of Intellectual Property
- Valuation Issues for Biotechnology
- FCPA/Anti-Corruption Basic Training
- FCPA/Anti-Corruption Due Diligence
- Current SEC/DOJ Recent Developments

PROFESSIONAL AFFILIATIONS

Certified Public Accountant, Texas

American Institute of Certified Public Accountants

Texas Society of Certified Public Accountants

EDUCATION

Bachelor of Science, Business Administration-Accounting University of Northern Colorado



Summary of Testimony			
Case	Case Number	Type of Testimony	Year
<i>SOURCECORP, Incorporated, SOURCECORP DMS, Inc. and Information Management Services, Inc. v. Steve Shill, Rita Shill, Robin Meyer, and Mark Meyer</i>	No. 76Y1160016303ARN, American Arbitration Association	Testimony, Arbitration	2004
<i>David Graben and Frank Strickler v. Western Reserve Life Assurance Company of Ohio; Intersecurities, Inc., and Timothy Hutton</i>	03-08-648 The District Court of Wise County, Texas 271 st Judicial District	Trial	2005
<i>Rodney Montello, et al v. Alcoa Inc., Reynolds Metals Company, Bon L. Campo and Tredegar Corporation</i>	The U.S. District Court of Southern District of Texas Victoria Division Civil Action No: V-02-84	Deposition	2006
<i>Bencor, Inc. v. The Variable Annuity Life Insurance Company</i>	AAA Arbitration	Arbitration	2006
<i>Highland Crusader Offshore Partners, L.P. et al v. Motient Corporation</i>	Cause No. 05-07996 In the District Court, Dallas County, Texas E-101 st Judicial District	Deposition	2007
<i>Gascoigne Melotte Holdings LLC (U.S.A.), Boumatic LLC (U.S.A.), Boumatic-Melotte SPRL (Belgium) v. Punch Technix N.V. (The Netherlands), et al</i>	In the International Chamber of Commerce Court of Arbitration	Arbitration	2008
<i>Fair Isaac Corporation v. Texas Mutual Insurance Company</i>	Civil Action No. 4:05- CV-03007 in the United States District Court for the Southern District of Texas Houston Division	Deposition	2008



Summary of Testimony			
Case	Case Number	Type of Testimony	Year
<i>RCA Holdings, Ltd, et al., v. Commonwealth Insurance Company, et al.</i>	Cause No. 2004-02048 in the 61 st Judicial District Court of Harris County Texas	Deposition	2010
<i>Arthur R. Hausmann; Arthur R. Hausmann P.C. Defined Benefit Pension Plan; and Arthur R. Hausmann P.C. Defined Benefit Pension Plan Trust v. Union Bank of California, N.A. Investment Services LLC; The Hartford Life and Annuity Insurance Company; Christopher Montagna; William Fortner; Economic Concepts, Inc. ("ECI"); and DOES 1-100</i>	Case Number: SA CV 07-1436 AHS (MLGx) in the United States District Court, Central District of California	Deposition	2010
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v. James R. Alguire, et al</i>	Case No. 3:09-CV-0724-N in the United States District Court for the Northern District of Texas Dallas Division	Deposition	2010
<i>Laura Pendergest-Holt, et al. v. Certain Underwriters at Lloyd's of London, et al.</i>	CaseNo.3:09-cv-0724-N in the United States District Court for the Northern District of TexasDallasDivision	Deposition	2010
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v James R. Alguire, et al</i>	Case No. 03:09-CV- 0724-N in the United States District Court for the Northern District of Texas Dallas Division	Deposition	2011
<i>In re Stanford International Bank, Ltd., Debtor in a Foreign Proceeding</i>	CaseNo.3:09-cv-0721-N in the United States District Court for the Northern District of TexasDallasDivision	Deposition	2011
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v Dillon Gage Inc. of Dallas and Dillon Gage Inc.</i>	Case No. 03:10-cv- 01973-N in the United States District Court for the Northern District of Texas Dallas Division	Deposition	2012



Summary of Testimony			
Case	Case Number	Type of Testimony	Year
<i>Securities and Exchange Commission v Daniel Bogar, Bernerd E. Young, and Jason T. Green</i>	Administrative Proceeding File No. 3-15003 before the Securities and Exchange Commission of the United States of America	Testimony	2013
<i>Ralph S. Janvey, in his Capacity as Court-Appointed receiver for the Stanford International Bank Ltd., et al. and the Official Stanford Investors Committee v. Peter F. Romero</i>	Case No. 3:11-cv-00297-N-BG in the United States District Court for the Northern District of Texas Dallas Division	Deposition	2014
<i>Ralph S Janvey, In his capacity as court-appointed receiver for the Stanford International Bank, LTD. ET AL., and the official Stanford Investors Committee, Plaintiffs, VS. the University of Miami</i>	Cause No.3:11-cv-00041 in the United States District Court for the Northern District of Texas Dallas Division	Deposition	2015
<i>Ralph S. Janvey, in his Capacity as Court-Appointed receiver for the Stanford International Bank LTD., ET AL. and the Official Stanford Investors Committee vs. Peter F Romero</i>	Civil Action No. 3:11- cv-00297-N-BG In the United States District Court for the Northern District of Texas Dallas Division	Testimony	2015
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v Dillon Gage Inc. of Dallas and Dillon Gage Inc.</i>	Case No. 03:10-cv- 01973-N in the United States District Court for the Northern District of Texas Dallas Division	Deposition (2)	2015
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v Dillon Gage Inc. of Dallas and Dillon Gage Inc.</i>	Case No. 03:10-cv- 01973-N in the United States District Court for the Northern District of Texas Dallas Division	Trial Testimony	2015



Summary of Testimony			
Case	Case Number	Type of Testimony	Year
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al. and the Official Stanford Investors Committee v. Adams & Reese, LLP, et al.</i>	CaseNo. 3:12-cv-0495- N-BL in the United States District Court for the Northern District of Texas Dallas Division	Deposition	2015
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al. v. James R. Alguire, et al.</i>	CaseNo. 3:09-CV-0724-N in the United States District Court for the Northern District of TexasDallas Division	Deposition	2015
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al. v. Patricia Maldonado</i>	CaseNo. 03:14-cv-2826-N in the United States District Court for the Northern District of TexasDallas Division	Trial Testimony	2015
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v. GMAG LLC, Magness Securities LLC, and Gary D. Magness, Individually and in His Capacity as Trustee of the Gary D. Magness Irrevocable Trust</i>	Case No. 3:15-CV-0401- N-BG in the United States District Court for the Northern District of Texas Dallas Division	Depositions (4)	2016
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al. v. Daniel T. Bogar, et al.</i>	CaseNo. 3:14-CV-3635- N-BG in the United States District Court for the Northern District of TexasDallasDivision	Deposition	2016
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v. GMAG LLC, Magness Securities LLC, and Gary D. Magness, Individually and in His Capacity as Trustee of the Gary D. Magness Irrevocable Trust</i>	Case No. 3:15-CV-0401- N-BG in the United States District Court for the Northern District of Texas Dallas Division	Trial Testimony	2017



Summary of Testimony			
Case	Case Number	Type of Testimony	Year
<i>Tech Pharmacy Services, LLC v. Alixa Rx LLC and Golden Gate National Senior Care LLC d/b/a Golden Living Centers</i>	Civil Action No. 4:14-cv00766-ALM in the United States District Court for the Eastern District of Texas, Sherman Division	Deposition Trial Testimony	2017
<i>Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford Receivership Estate, and the Official Stanford Investors Committee v. Proskauer Rose, LLP, and Thomas V. Sjoblom</i>	Civil Action No. 3:13-cv-00477-N in the United States District Court for the Northern District of Texas, Dallas Division	Deposition	2018
<i>Peggy Roif Rotstain, et al. and the Official Stanford Investors Committee v. Trustmark National Bank, et al.</i>	Civil Action No. 3:09-cv-2384-N in the United States District Court for the Northern District of Texas, Dallas Division	Deposition	2018
<i>Harlow Management, L.L.C. and Minaki Capital Investments, LLC v. Stites Management, L.L.C, Dale Stites, Michael T. Stites, East Texas Precast Co., Ltd., Gulf Shore Erectors, LLC, and Gulf Coast Precast Erectors, LLC v. Robert Diakiw, Richard Schultz, Tom Haines, Hussein Sinjari, Pat Cooledge, Jeronimo Trejo, Helen Huereca, Construction Materials and Building Services, LLC, Southwest Commodities Brokers, LLC, Legacy Precast, LLC and Legacy Precast Administrative Group, LLC</i>	Cause No. 2013-25191 in the District Court of Harris County, Texas, 133rd Judicial District	Deposition	2018

Bates Numbered Documents

KSE/OC:000413-000416
KSE/OC:001369-001372
KSE/OC:028348-028687
KSE/OC:029024-029562
KSE/OC:029657-029658
KSE/OC:030645-030646
KSE/OC:030917-030956
KSE/OC:038407-038565
KSE/OC:043867-043874
KSE/OC:043875-044054
KSE/OC:044055-044193
KSE/OC:044194-044361
KSE/OC:044362-044944
KSE/OC:044945-045486
KSE/OC:045487-046170
KSE/OC:046171-046294
KSE/OC:046295-046408
KSE/OC:046409-046524
KSE/OC:046525-046616
KSE/OC:046617-046857
KSE/OC:046858-047049
KSE/OC:047050-047246
KSE/OC:047247-047244
KSE/OC:047545-047704
KSE/OC:047705-047848
KSE/OC:047849-047999
KSE/OC:048000-048138
KSE/OC:048139-048265
KSE/OC:048266-048438
KSE/OC:048439-048612
KSE/OC:048613-048798
KSE/OC:048799-048595
KSE/OC:048956-049128
KSE/OC:049129-049352
KSE/OC:049353-049550
KSE/OC:049551-049678
KSE/OC:049679-049780
KSE/OC:049781-049981
KSE/OC:049982-050156
KSE/OC:050157-050347
KSE/OC:050348-050535
KSE/OC:050536-050792
KSE/OC:050793-050998
KSE/OC:050999-051182
KSE/OC:051183-051427
KSE/OC:051428-051825
KSE/OC:051826-052104
KSE/OC:052105-052403
KSE/OC:052404
KSE/OC:052472-052480
KSE/OC:052706
KSE/OC:052707
KSE/OC:053255-053346
KSE/OC:053347-053442
KSE/OC:053443
KSE/OC:053444-053646
KSE/OC:053647-053798

Bates Numbered Documents

KSE/OC:053799-053917
 KSE/OC:053918-054068
 KSE/OC:054069-054194
 KSE/OC:054195-054337
 KSE/OC:054338-054517
 KSE/OC:054518-054653
 KSE/OC:054654-054801
 KSE/OC:054802-055038
 KSE/OC:055039-055249
 KSE/OC:055250-055454
 KSE/OC:055455-055707
 KSE/OC:055708-056588
 KSE/OC:056589-057074
 KSE/OC:057075-057115
 KSE/OC:057116-057771
 KSE/OC:057772-058028
 KSE/OC:058029-058771
 KSE/OC:058772-059122
 KSE/OC:059123-059953
 KSE/OC:059954-060372
 KSE/OC:060373-060430
 Salomon005000-005046
 SALOMON500071-500075

Deposition Transcripts

Deposition Transcript of David Brian Gluck, dated August 22, 2018
 Deposition Transcript of Henry Steinbrecher, dated June 26, 2018
 Deposition Transcript of Cathy Lee, dated June 12, 2018
 Deposition Transcript of Thomas E. Hornish, dated June 13, 2018
 Deposition Transcript of Thomas D. Allen, dated June 20, 2018
 Deposition Transcript of James A. Martin, dated August 30, 2018
 Rule 30(b)(6) Deposition Transcript of Scott M. Long for Kroenke Sports & Entertainment, LLC, dated September 5, 2018
 Deposition Transcript of Nic Salomon, dated May 16, 2018
 Deposition Transcript of Roger Werner, dated June 7, 2018
 Deposition Transcript of Jeff Dean Holowaty, dated July 17, 2018
 Deposition Transcript of Nic Salomon, dated March 1, 2018

Deposition Exhibit Number

Exhibit 01
 Exhibit 02
 Exhibit 03
 Exhibit 04
 Exhibit 05
 Exhibit 06
 Exhibit 07
 Exhibit 08
 Exhibit 09
 Exhibit 10
 Exhibit 11
 Exhibit 12
 Exhibit 13
 Exhibit 14
 Exhibit 15
 Exhibit 16
 Exhibit 17
 Exhibit 18
 Exhibit 19

Bates Number

Salomon003247-003252
 Salomon002097
 Salomon006964
 Salomon006965
 Salomon007070
 No bates
 KSE/OC:000033
 KSE/OC:000039
 KSE/OC:000042-000043
 KSE/OC:000040-000041
 Salomon002692-002696
 KSE/OC:000053-000059
 KSE/OC:031081-031082
 Salomon004717-004723
 KSE/OC:000073-000075
 KSE/OC:000082-000085
 KSE/OC:000120
 KSE/OC:000122
 KSE/OC:000124

<u>Deposition Exhibit Number</u>	<u>Bates Number</u>
Exhibit 20	Salomon004545-004549
Exhibit 21	Salomon004550-004555
Exhibit 22	Salomon002545-002551
Exhibit 23	Salomon004556-004562
Exhibit 24	Salomon004573-004584
Exhibit 25	Salomon004585-004591
Exhibit 26	KSE/OC:000169-000173
Exhibit 27	KSE/OC:000174-000175
Exhibit 28	Salomon004542-004544
Exhibit 28	KSE/OC:000181
Exhibit 30	KSE/OC:000198-000205
Exhibit 31	Salomon004520-004529
Exhibit 32	Salomon002521-002533
Exhibit 33	Salomon002534-002535
Exhibit 34	KSE/OC:000219-000220
Exhibit 35	KSE/OC:000223-000224
Exhibit 36	KSE/OC:000225-000231
Exhibit 37	KSE/OC:000232-000234
Exhibit 38	KSE/OC:000235-000237
Exhibit 39	KSE/OC:000238-000239
Exhibit 40	KSE/OC:000240-000245
Exhibit 41	KSE/OC:000246-000247
Exhibit 42	KSE/OC:000261-000264
Exhibit 43	No bates
Exhibit 44	KSE/OC:000278
Exhibit 45	KSE/OC:000291-000293
Exhibit 46	KSE/OC:000369-000370
Exhibit 47	KSE/OC:000371-000373
Exhibit 48	Salomon000067-000068
Exhibit 49	KSE/OC:000279-000281
Exhibit 50	KSE/OC:000384-000385
Exhibit 52	No bates
Exhibit 53	Salomon000106-000107
Exhibit 54	KSE/OC:000413-000416
Exhibit 55	KSE/OC:000418
Exhibit 56	KSE/OC:000419-000426
Exhibit 57	Salomon007120
Exhibit 58	KSE/OC:000429-000430
Exhibit 59	KSE/OC:000435-000436
Exhibit 60	KSE/OC:000439-000441
Exhibit 61	KSE/OC:000443-000446
Exhibit 62	KSE/OC:000447-000448
Exhibit 63	KSE/OC:000466-000467
Exhibit 64	Salomon007117-007119
Exhibit 65	No bates
Exhibit 66	KSE/OC:028055
Exhibit 67	KSE/OC:028076
Exhibit 68	KSE/OC:028056-028057
Exhibit 69	KSE/OC:028078
Exhibit 70	KSE/OC:028077
Exhibit 71	KSE/OC:028058
Exhibit 72	KSE/OC:028059-028063
Exhibit 73	KSE/OC:028064
Exhibit 74	KSE/OC:028080
Exhibit 75	KSE/OC:028083-028087
Exhibit 76	KSE/OC:028065-028066
Exhibit 77	KSE/OC:028079

<u>Deposition Exhibit Number</u>	<u>Bates Number</u>
Exhibit 78	KSE/OC:028081-028082
Exhibit 79	KSE/OC:030917; KSE/OC:030927
Exhibit 80	KSE/OC:000947-000950
Exhibit 81	KSE/OC:030880-030883
Exhibit 82	W/2069321
Exhibit 83	W/2069708
Exhibit 84	KSE/OC:000386-000390
Exhibit 85	No bates
Exhibit 86	w/2105847
Exhibit 87	No bates
Exhibit 88	No bates
Exhibit 89	KSE/OC:000013
Exhibit 90	KSE/OC:000040-000041
Exhibit 91	KSE/OC:000044
Exhibit 92	KSE/OC:036630
Exhibit 93	KSE/OC:036521
Exhibit 94	Salomon004717-004722
Exhibit 95	KSE/OC:000109-000110
Exhibit 96	KSE/OC:000105-000108
Exhibit 97	KSE/OC:000116-000119; Salomon004614-004617
Exhibit 98	KSE/OC:000123
Exhibit 99	KSE/OC:000178-000180; Salomon004542-004544
Exhibit 100	KSE/OC:000223-000224
Exhibit 101	KSE/OC:000371-000373
Exhibit 102	No bates
Exhibit 103	KSE/OC:000405-000412
Exhibit 104	KSE/OC:027994-028042
Exhibit 105	No bates
Exhibit 106	No bates
Exhibit 107	KSE/OC:036080-036119
Exhibit 108	No bates
Exhibit 109	No bates
Exhibit 110	w/2069708
Exhibit 111	KSE/OC:000907-000908
Exhibit 112	KSE/OC:000374
Exhibit 113	KSE/OC:030894
Exhibit 114	KSE/OC:030896
Exhibit 115	No bates
Exhibit 116	No bates
Exhibit 117	No bates
Exhibit 118	No bates
Exhibit 119	No bates
Exhibit 120	KSE/OC:000391-000396
Exhibit 121	No bates
Exhibit 122	No bates
Exhibit 123	No bates
Exhibit 124	No bates
Exhibit 125	No bates
Exhibit 126	No bates
Exhibit 127	No bates
Exhibit 128	No bates
Exhibit 129	No bates
Exhibit 130	No bates
Exhibit 131	No bates
Exhibit 132	No bates
Exhibit 133	KSE/OC:000015-000025
Exhibit 134	KSE/OC:000014

<u>Deposition Exhibit Number</u>	<u>Bates Number</u>
Exhibit 135	KSE/OC:000039
Exhibit 136	KSE/OC:042488-042489
Exhibit 137	KSE/OC:000042-000043
Exhibit 138	KSE/OC:000045-000046
Exhibit 139	KSE/OC:000060-000062
Exhibit 140	KSE/OC:000282-000283
Exhibit 141	KSE/OC:000299-000300
Exhibit 142	KSE/OC:000376-000377
Exhibit 143	KSE/OC:000431-000432
Exhibit 144	No bates
Exhibit 145	No bates
Exhibit 146	No bates
Exhibit 147	No bates
Exhibit 148	No bates
Exhibit 149	No bates
Exhibit 150	No bates
Exhibit 151	No bates
Exhibit 152	No bates
Exhibit 153	No bates
Exhibit 154	No bates
Exhibit 155	No bates
Exhibit 156	No bates
Exhibit 157	No bates
Exhibit 158	No bates
Exhibit 159	No bates
Exhibit 160	No bates
Exhibit 161	No bates
Exhibit 300	KSE/OC:030880-030883
Exhibit 301	KSE/OC:042936
Exhibit 302	KSE/OC:000947-000950
Exhibit 303	KSE/OC:030894
Exhibit 304	KSE/OC:028341-028342
Exhibit 305	KSE/OC:052782-052783
Exhibit 306	KSE/OC:000608-000611
Exhibit 307	KSE/OC:052784
Exhibit 308	KSE/OC:000375
Exhibit 309	KSE/OC:030896
Exhibit 310	KSE/OC:052805-052811
Exhibit 311	KSE/OC:052812-052819
Exhibit 312	KSE/OC:030235
Exhibit 313	KSE/OC:052405-052411
Exhibit 314	KSE/OC:000413-000416
Exhibit 315	KSE/OC:052418-052420
Exhibit 316	KSE/OC:052997-052999
Exhibit 317	KSE/OC:032939-032943
Exhibit 318	KSE/OC:052516-052517
Exhibit 319	KSE/OC:052518-052519
Exhibit 320	KSE/OC:052520-052527
Exhibit 321	KSE/OC:052538-052541
Exhibit 322	KSE/OC:053015-053016
Exhibit 323	KSE/OC:000443-000446
Exhibit 324	KSE/OC:053051-053052
Exhibit 325	KSE/OC:053063-053064
Exhibit 326	KSE/OC:000449-000451
Exhibit 327	KSE/OC:052670-052675
Exhibit 328	KSE/OC:052889-052892

Deposition Exhibit Number

Bates Number

Exhibit 329	KSE/OC:052680
Exhibit 330	KSE/OC:001985
Exhibit 331	KSE/OC:027980-027981
Exhibit 332	KSE/OC:001986-001987
Exhibit 333	KSE/OC:052705-052709
Exhibit 334	KSE/OC:000477-000491
Exhibit 335	KSE/OC:000987
Exhibit 336	KSE/OC:000495
Exhibit 337	KSE/OC:000518-000523
Exhibit 338	KSE/OC:000700-000703
Exhibit 339	KSE/OC:052431-052432; KSE/OC:053187-053254
Exhibit 340	KSE/OC:052471-052509
Exhibit 341	KSE/OC:000947-000950
Exhibit 342	KSE/OC:061154-061156
Exhibit 343	KSE/OC:043020-043021
Exhibit 344	KSE/OC:030896
Exhibit 345	KSE/OC:030235
Exhibit 346	KSE/OC:052405-052411
Exhibit 347	KSE/OC:052418-052420
Exhibit 348	KSE/OC:062208-062210
Exhibit 349	KSE/OC:052558-052559
Exhibit 350	KSE/OC:052613-052614
Exhibit 351	KSE/OC:031070-031080
Exhibit 352	KSE/OC:053139-053142
Exhibit 353	KSE/OC:053151-053155
Exhibit 354	KSE/OC:052736-052765
Exhibit 355	KSE/OC:037798-037799
Exhibit 356	KSE/OC:000900-000950
Exhibit 357	KSE/OC:000877-000878
Exhibit 358	KSE/OC:062676-062678
Exhibit 359	KSE/OC:000735-000737
Exhibit 360	KSE/OC:062679-062680
Exhibit 361	No bates
Exhibit 362	KSE/OC:043867-043874
Exhibit 363	No bates
Exhibit 364	No bates
Exhibit 365	KSE/OC:052404
Exhibit 366	KSE/OC:029657-029658
Salomon March 2018 Depo Exhibit 1	No bates
Salomon March 2018 Depo Exhibit 2	No bates
Salomon March 2018 Depo Exhibit 3	No bates
Salomon March 2018 Depo Exhibit 4	No bates
Salomon March 2018 Depo Exhibit 5	No bates
Salomon March 2018 Depo Exhibit 6	No bates

Legal Filings

Amended Plaintiff Nic Salomon's Notice of Videotaped Deposition of Defendant Kroenke Sports & Entertainment, LLC
Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, dated August 16, 2018
Plaintiff Nic Salomon's Notice of Videotapes Deposition of Outdoor Channel Holdings, Inc. Pursuant to Rule 30(b)(6)
of the Federal Rules of Civil Procedure, dated August 17, 2018
Plaintiff's Second Amended Complaint, filed August 31, 2017
Responses of Outdoor Channel Holdings, Inc. to Plaintiff Nic Salomon's First Set of Requests for Admission,
dated December 18, 2017
Plaintiff's Third Supplemental Answers and Objections to First Set of Interrogatories of Defendants Kroenke Sports &
Entertainment, LLC and Outdoor Channel Holdings, Inc., dated August 24, 2018
First Supplemental Answers of Outdoor Channel Holdings, Inc. to Plaintiff Nic Salomon's First Set of Interrogatories,
dated May 4, 2018

Legal Filings

Plaintiff's Fourth Supplemental Answers and Objections to First Set of Interrogatories of Defendants Kroenke Sports & Entertainment, LLC and Outdoor Channel Holdings, Inc., dated October 1, 2018

Other Reports

Expert Witness Report of David C. Buck, dated September 13, 2018

Expert Report of Kevin Kreitzman, MBA, dated September 14, 2018

Publically Available Information

Weil, Roman L., Daniel G. Lentz, and Elizabeth A. Evans. (2017). *Litigation Services Handbook: The Role of the Financial Expert*.

Sixth Edition. Hoboken, New Jersey: John Wiley & Sons, Inc.

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http://pages.stern.nyu.edu/~adamodar/New_Home_Page/valquestions/taxrate.htm

James R. Hitchner, *"Financial Valuation, Application and Models"*. 3rd Edition.

Valuation of Privately Held Company Equity Securities Issued as Compensation, Practice Aid, Working Draft, 2012, American

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Form 10-K, December 31, 2009, Outdoor Channel Holdings, Inc.

Form 10-K, December 31, 2010, Outdoor Channel Holdings, Inc.

Form 10-K, December 31, 2011, Outdoor Channel Holdings, Inc.

Form 10-K, December 31, 2012, Outdoor Channel Holdings, Inc.

Form 10-K/A, December 31, 2012, Outdoor Channel Holdings, Inc.

Form 425, February 27, 2013, Outdoor Channel Holdings, Inc.

Form 8-K, March 4, 2013, Outdoor Channel Holdings, Inc.

Form 425, March 7, 2013, Outdoor Channel Holdings, Inc.

Form 8-K, March 13, 2013, Outdoor Channel Holdings, Inc.

Schedule 14A, April 11, 2013, Outdoor Channel Holdings, Inc.

Schedule 14A, May 2, 2013, Outdoor Channel Holdings, Inc.

Schedule 14A, May 6, 2013, Outdoor Channel Holdings, Inc.

Form 8-K, May 8, 2013, Outdoor Channel Holdings, Inc.

Form 8-K, May 16, 2013, Outdoor Channel Holdings, Inc.

Form 8-K, November 15, 2012, Outdoor Channel Holdings, Inc.

Schedule 13D, November 15, 2012, Outdoor Channel Holdings, Inc.

Form 10-Q, September 30, 2012, Outdoor Channel Holdings, Inc.

Form 10-Q, March 31, 2012, Outdoor Channel Holdings, Inc.

Form S-4 Registration Statement, November 21, 2012, Intermedia Outdoor Holdings, Inc.

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http://pages.stern.nyu.edu/~adamodar/New_Home_Page/home.htm

<https://www.forbes.com/nba-valuations/list/#tab:overall>

optvar12.xls

taxrate12

totalbeta12.xls

vebitda12.xls

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NIC SALOMON,

Plaintiff,

v.

**KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN CAPITAL LLC,**

Defendants.

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**CIVIL ACTION NO.
3:15-CV-666-M**

EXHIBIT D

**AFFIDAVIT OF KEVIN D. EVANS IN SUPPORT OF
KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR
CHANNEL HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NIC SALOMON,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO.
)	3:15-CV-00666-M
KROENKE SPORT &)	
ENTERTAINMENT, LLC, OUTDOOR)	
CHANNEL HOLDINGS, INC., and)	
PACIFIC NORTHERN CAPITAL,)	
LLC,)	
)	
Defendants.)	
_____)	

VIDEOTAPED DEPOSITION OF JEFF DEAN HOLOWATY,
taken on behalf of the Defendants at 17332
Irvine Boulevard, Suite 220, Tustin, California,
commencing at 9:01 a.m., on Tuesday, July 17, 2018,
before Penny Sander, C.S.R. No. 4769, a Certified
Shorthand Reporter within and for the State of
California.

1 cash proceeds from PNC."

2 What did you mean by "primarily will be
3 financed"?

4 A. The cash proceeds -- it was the intention
10:04 5 from PNC the whole time, the entire time, to not
6 completely fund all of the transaction from PNC. It
7 was our anticipation that we would have multiple
8 other partners to participate in the equity portion
9 of the -- of the proceeds that would go towards the
10:05 10 purchase price.

11 Q. That's exactly what I wanted to ask you
12 about, because Mr. Salomon has been making
13 representations throughout this case, I'll just
14 refer -- or represent to you that if -- in the event
10:05 15 that other investors were not able to be obtained,
16 PNC was prepared to front the entire price,
17 acquisition price.

18 Was PNC ever prepared to fund the entire
19 acquisition price?

10:05 20 A. No.

21 Q. Did PNC and Mr. Salomon ever secure
22 additional funding sources?

23 A. No.

24 Q. Was this an effort to do that?

10:05 25 A. There was an effort internally outside of

1 Mr. Salomon to work with our partners to gather
2 interest to participate in the cash proceeds required
3 to purchase the business.

4 Q. Were outside funding sources contacted by
10:05 5 either PNC or Mr. Salomon in an effort to obtain
6 equity funding?

7 A. Not Mr. Salomon, but internally we were --
8 internally at PNC, I should say, there was an effort
9 to have discussions with potential interested
10:06 10 parties, if you will.

11 Q. Do you recall who those potential interested
12 parties were?

13 A. I do not off the top of my head, no.

14 Q. Were there -- or was there an outreach to
10:06 15 those potentially interested parties by PNC?

16 A. We did have conversations with -- with
17 individuals, yes.

18 Q. And did anybody express an interest in
19 contributing to the potential purchase price?

10:06 20 A. Interest, yes, but formalized to agree upon
21 it, no. There was no formal agreement that we
22 entered into as the transaction didn't lead us to go
23 down that path.

24 MR. EVANS: Let me -- there seems to have been a
10:07 25 flurry of activity on the 15th. Let me show you a

1 A. Just like -- sorry. Just like to point out
2 these were conversations that I had with Tim McQuay
3 on my own. Nic was not involved in any of these
4 conversations.

10:41 5 Q. That was going to be a question I was going
6 to get to, but thanks. That helps.

7 Had anybody told you, either from Noble or
8 Mr. Salomon, up to this point in time that another
9 company interested in potentially acquiring the
10:41 10 aerial camera business had offered more money?

11 A. I don't know about offering more, but I
12 believe Tim had indicated to me that there were
13 additional parties interested at this point.

14 Q. So now we're at February 5 in the sequence
10:41 15 of events, and we're talking about a 3.65 million
16 cash at close. I know I asked you this question
17 before in connection with a previous draft, but was
18 it PNC's intention to fund, if this deal were to
19 close, the entire cash at close?

10:42 20 A. No.

21 Q. Do you recall whether you had any
22 discussions with Mr. Salomon about the February 5
23 draft term sheet before you sent it to Mr. McQuay?

24 A. I don't recall specifically. Presumably we
10:42 25 did, yes. Because, again, at that point we were, you

1 Q. Do you recall what the -- Mr. Schneider and
2 Mr. Woechsler's reaction was?

3 A. I don't. I don't recall who set it up or
4 how we -- I don't believe PNC had an existing
11:39 5 relationship with Mr. Schneider or Mr. Woechsler, but
6 I vaguely recall having that meeting in New York,
7 yes.

8 Q. Did Mr. Schneider, Mr. Woechsler at IMAX
9 agree to invest in the potential acquisition of the
11:39 10 aerial camera business?

11 A. No, they did not agree to it. Did they
12 express interest, yes.

13 Q. What happened? Do you know what happened
14 after their expression of interest?

11:39 15 A. No. Initially they were interested, but I'm
16 not sure why they weren't going forward or why we
17 weren't interested in having them as partners.

18 Q. If you look two down, there's an entry
19 March 14, 2013 where Mr. Salomon writes that he spoke
11:39 20 with Jeff Holowaty. "Jeff Holowaty had heard from
21 McQuay, who communicated that KSE was not interested
22 in the Aerial Camera Business."

23 Do you recall Mr. McQuay ever telling you
24 that KSE was not interested in the aerial camera
11:40 25 business?

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NIC SALOMON,

Plaintiff,

V.

**KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN CAPITAL LLC,**

Defendants.

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**CIVIL ACTION NO.
3:15-CV-666-M**

EXHIBIT E

**AFFIDAVIT OF KEVIN D. EVANS IN SUPPORT OF
KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR
CHANNEL HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NIC SALOMON, §
§
Plaintiff, §
§
v. §
§ CIVIL ACTION NO.
KROENKE SPORTS & § 3:15-666-M
ENTERTAINMENT, LLC, §
OUTDOOR CHANNEL HOLDINGS, §
INC., and PACIFIC §
NORTHERN CAPITAL, LLC, §
§
Defendants. §

ORAL AND VIDEOTAPED DEPOSITION OF

NICOLAS SALOMON

MAY 16, 2018

VOLUME 2

Job No. CS2878358

VOLUME 2 OF ORAL AND VIDEOTAPED
DEPOSITION OF NICOLAS SALOMON, produced as a witness at
the instance of the DEFENDANT, and duly sworn, was taken
in the above-styled and numbered cause on the 16th day
of May, 2018, from 1:00 p.m. to 5:24, before TINA
TERRELL BURNEY, CSR in and for the State of Texas,
reported by machine shorthand, at the offices of JACKSON
WALKER L.L.P., 2323 Ross Avenue, Suite 600, Dallas, TX
75201, pursuant to the Federal Rules of Civil Procedure.

1 was -- and they at one point mentioned some contacts
2 with either Live Nation or Bruckheimer or some people in
3 the media entertainment industry based on their
4 relationships.

5 Q. Did you and PNC meet with any other investors
6 together?

7 A. We did not, but we -- we were interested in
8 having Roger Warner invest if he was interested, and we
9 were also interested in seeking an investment from the
10 NFL Venture Capital Fund, which had just been created
11 around this time.

12 Q. And none of those -- Roger Warner or the NFL
13 Investment Capital Fund, IMAX, none of those invested?

14 A. Well, I mean, we never had the opportunity to
15 complete an investment.

16 Q. They never agreed that they would invest?

17 A. That's correct; however, with the -- with the
18 NFL Venture Capital Fund, that became a continued
19 dialogue where I actually worked with Fulbright to put
20 together a prospectus for soliciting the NFL's -- an
21 investment from the NFL and this technology company.

22 Q. I appreciate that. Thank you. And there was
23 never any agreement by the NFL to invest, right?

24 A. I don't know. Maybe that's why Mr. Kroenke
25 bought Outdoor Channel.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NIC SALOMON,

Plaintiff,

v.

**KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN CAPITAL LLC,**

Defendants.

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**CIVIL ACTION NO.
3:15-CV-666-M**

EXHIBIT F

**AFFIDAVIT OF KEVIN D. EVANS IN SUPPORT OF
KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR
CHANNEL HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NIC SALOMON, §
§
Plaintiff, §
§
VS. § CIVIL ACTION
§
KROENKE SPORTS & § NO. 3:15-CV-666-M
ENTERTAINMENT, LLC, §
OUTDOOR CHANNEL HOLDINGS, §
INC., and PACIFIC NORTHERN §
CAPITAL, LLC, §
§
Defendants. §

CONFIDENTIAL ORAL AND VIDEOTAPED DEPOSITION OF
NIC SALOMON
MAY 17, 2018
VOLUME 3 OF 3

Job No. CS2878362

CONFIDENTIAL ORAL AND VIDEOTAPED DEPOSITION OF NIC
SALOMON, produced as a witness at the instance of the
DEFENDANTS, and duly sworn, was taken in the
above-styled and numbered cause on May 17, 2018, from
9:05 a.m. to 1:06 p.m., before Delanie Schreiber, CSR
No. 9375 in and for the State of Texas, reported by
stenographic method, at the offices of Jackson Walker,
L.L.P., 2323 Ross Avenue, Suite 600, Dallas, Texas,
75201, pursuant to the Federal Rules of Civil Procedure
and the provisions stated on the record or attached
hereto. Job No. 2878362

1 A. Yes.

2 Q. A lot?

3 A. Yes.

4 Q. Did you call them? Did you call one of the
5 Holowatys?

6 A. Well, I had talked -- I had spoke with Jeff and
7 there was -- there was -- I believe there was some sort
8 of voice mail communication with Kelly either him to me
9 or me to him but I can't remember. So...

10 Q. Well, what did -- what did --

11 A. Maybe he called me and I didn't call him --
12 maybe he left me a voice mail. I didn't call him back.
13 I didn't -- I don't remember the...

14 Q. Well, you were so upset you didn't call him
15 back? Is that what you're saying?

16 A. I'm saying I don't remember. There was -- the
17 only thing I remember after that would be from what I
18 saw in an e-mail from that. So...

19 Q. This is so devastating to you and you were so
20 upset that you don't recall what you said to
21 Mr. Holowaty or what Mr. Holowaty said to you?

22 A. I remember that after that I didn't want to
23 have further communication with them about -- I mean,
24 about -- I -- I didn't -- I didn't see how I could do a
25 business transaction with them after what happened.

1 Q. So as of April 9, you basically had determined
2 to yourself that you couldn't go forward with PNC?

3 A. I mean, it was not likely. But I wanted to
4 know what happened.

5 Q. Do you see that you didn't sign the Term Sheet
6 -- or the amendment, the March 21 document?

7 A. Correct.

8 Q. You knew you didn't sign it, right?

9 A. I didn't -- I didn't sign it. And then they
10 had this game that got played where they tried to get me
11 to -- to sign another Term Sheet amendment that
12 reattached that to the secret amendment and, you know,
13 it was -- and that -- that -- and that went on for
14 months.

15 Q. Well, let's stick with my question. My
16 question was you didn't sign -- you saw when you got the
17 document, you didn't sign it, right? And you knew the
18 nonbinding provision in the Term Sheet that you drafted
19 said that any document purporting to amend the Term
20 Sheet was not valid unless all parties signed, right?
21 And you knew you didn't sign the term -- amendment,
22 right?

23 A. Well, I mean --

24 Q. Right? You knew you didn't sign it?

25 A. Like we discussed, that's a legal -- I mean,

**IN THE UNITED STATES DISTRICT COURT
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NIC SALOMON,

Plaintiff,

V.

**KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN CAPITAL LLC,**

Defendants.

**CIVIL ACTION NO.
3:15-CV-666-M**

EXHIBIT G

**AFFIDAVIT OF KEVIN D. EVANS IN SUPPORT OF
KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR
CHANNEL HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS - DALLAS DIVISION

NIC SALOMON,
Plaintiff,

vs.

No. 3:15-CV-00666-M

KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN
CAPITAL, LLC,

Defendants.

VIDEOTAPED DEPOSITION OF THOMAS D. ALLEN

Irvine, California

Wednesday, June 20, 2018

VOLUME I

TRANSCRIPT MARKED CONFIDENTIAL - ATTORNEYS' EYES ONLY

Reported by:

WINDY PICARD

CSR No. 12879

Job No. 2875084

PAGES 1-160

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1

1 above-referenced entities."

2 And while I can't find any date on that
3 particular e-mail from Ms. Meyers, Mr. McQuay, on
4 February 25, 2013, then forwards Ms. Meyers' e-mail and
5 attachment to you and Mr. Hornish, along with
6 Francisco Penafiel and Robert Campbell.

7 Do you remember Mr. Penafiel?

8 A I do. He was an analyst at Noble.

9 Q How about Mr. Campbell?

10 A He was one of the two aforementioned senior
11 bankers at Noble that we were working with.

12 Q He and Mr. McQuay?

13 A Yes.

14 Q So Mr. McQuay writes to you and Mr. Hornish,
15 "This just arrived. Bob and I are in a meeting
16 beginning at 2:00, so can we talk around 4:00?"

17 And then attached to this e-mail chain is a
18 February 24, 2013 e-mail from the Aspen Group. It's
19 "Re: Letter of Intent for the purchase Of Cablecam, LLC
20 and Skycam, LLC Assets."

21 Do you see that?

22 A I do.

23 Q And then at the bottom of the first page of
24 that LOI, letter of intent, there's a section called
25 "4. Purchase Price."

CONFIDENTIAL - ATTORNEYS' EYES ONLY

43

1 Do you see that?

2 A I do.

3 Q And it says the purchase price being
4 \$4,500,000. Do you see that?

5 A I do.

6 Q Do you recall any discussions with
7 Noble Financial about the Aspen Group offer -- or
8 letter of intent, I should say?

9 A I don't have a specific recollection of the
10 phone call that is implied to have happened later that
11 day, which I'm assuming probably did happen. I know
12 that they were one of the companies we were talking to.

13 But I note -- and this is just by way of
14 jogging my memory -- that one of the parties that were
15 CCed by Steffani Meyers' -- note to Tim that we
16 referenced earlier -- or e-mail -- is a person whose
17 e-mail address is psmauder@actioncamerahd.

18 That was -- I think his -- I think his first
19 name is -- in fact, it's noted. It's Phil Smauder.
20 Phil was a principal at Actioncam, which was one of the
21 companies that we had sued. And I believe Phil was a
22 former employee of our aerial camera business.

23 In looking at the LOI, I noticed, in .12, it's
24 titled -- in the section titled "Confidentiality," that
25 there's reference to obligating the company not to

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44

1 disclose this offer to Nic Salomon.

2 And I believe -- this is recollection. But I
3 believe that we were not terribly confident that this
4 company could raise the money to buy -- to buy the
5 aerial camera business because of the potential claims
6 that we had secured in court against Actioncam.

7 That's about as much as I recall about this
8 particular buyer.

9 Q And is that the reason why Outdoor Channel
10 didn't pursue negotiations or -- or efforts with
11 Aspen Group to sell or attempt to sell the aerial
12 camera business to them?

13 A I don't have a clear recollection as to what
14 we collectively decided, but I do have confidence that
15 we would have had a conversation about assessing their
16 ability to close and sincerity of their offer.

17 Q And was Mr. Salomon -- do you recall
18 Mr. Salomon being involved in those decisions related
19 to the LOI of Aspen Group?

20 A I do not believe he was. And that is probably
21 not a unique statement relative to the Aspen Group.
22 That any discussions with any buyer group, we did not
23 normally include Nic in those, because we understood
24 that he was conflicted.

25 Q And conflicted in what sense?

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45

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NIC SALOMON,

Plaintiff,

v.

**KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN CAPITAL LLC,**

Defendants.

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**CIVIL ACTION NO.
3:15-CV-666-M**

EXHIBIT H

**AFFIDAVIT OF KEVIN D. EVANS IN SUPPORT OF
KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR
CHANNEL HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO. 3:15-CV-00666-M

VIDEOTAPE DEPOSITION OF: JAMES A. MARTIN
AUGUST 30, 2018

NIC SALOMON,

PLAINTIFF,

V.

KROENKE SPORTS & ENTERTAINMENT, LLC, OUTDOOR CHANNEL
HOLDINGS, LLC, AND PACIFIC NORTHERN CAPITAL, LLC,

DEFENDANTS.

PURSUANT TO NOTICE, THE VIDEOTAPE
DEPOSITION OF JAMES A. MARTIN WAS TAKEN ON BEHALF OF
THE PLAINTIFF AT 4643 SOUTH ULSTER STREET, SUITE 800,
DENVER, COLORADO 80237, ON AUGUST 30, 2018, AT
10:06 A.M., BEFORE TINA M. STUHR, REGISTERED
PROFESSIONAL REPORTER AND NOTARY PUBLIC WITHIN
COLORADO.

JOB NO. 137826

11:57:06 1 to the transaction?

11:57:07 2 A. No.

11:57:08 3 Q. And so isn't it true that the only way
11:57:11 4 for that to happen would be for PNC and Mr. Salomon to
11:57:17 5 agree to an amendment of the term sheet?

11:57:20 6 MR. EVANS: Objection to form. Legal
11:57:22 7 conclusion.

11:57:24 8 A. I don't know if that's the only way it
11:57:26 9 could happen or not.

11:57:29 10 Q. (BY MR. IBRAHIM) That's one of the ways
11:57:30 11 it could happen, correct?

11:57:31 12 MR. EVANS: Same objection.

11:57:34 13 A. I wouldn't think that's one of the ways
11:57:36 14 it could happen.

11:57:38 15 Q. (BY MR. IBRAHIM) Now, when did
11:57:39 16 Mr. Kroenke find out about the term sheet?

11:57:44 17 A. I -- I'm not sure he knows even now that
11:57:51 18 there was a term sheet. Well, I take that back. I
11:57:55 19 believe he knows there was at the time and up through
11:58:00 20 the transaction. I never discussed it with him. It
11:58:05 21 was not material.

11:58:07 22 Q. Okay. Let me unpack that a little bit.
11:58:09 23 You testified that "I believe he knows there was at
11:58:14 24 the time." What do you mean by that?

11:58:21 25 A. I don't think that's what I meant to say.

11:58:23 1 I believe he knows now, because we're involved in this
11:58:27 2 lawsuit, that there was a term sheet. I do not
11:58:31 3 believe he knew -- and I would be pretty certain at
11:58:34 4 the time he had no idea. I know I never discussed it
11:58:40 5 with him. It was not material.

11:58:41 6 Q. When did you sit down and have the
11:58:43 7 conversation with Mr. Kroenke to find out when he
11:58:47 8 first learned about the term sheet?

11:58:50 9 MR. EVANS: Objection to form. Misstates
11:58:51 10 the testimony.

11:58:55 11 A. I don't believe I ever asked him when he
11:58:57 12 found out about it.

11:58:58 13 Q. (BY MR. IBRAHIM) And so you don't know
11:58:59 14 the answer to that question, do you?

11:59:01 15 A. I know I never discussed it with him.

11:59:18 16 Q. I'm going to show you what's been
11:59:20 17 previously marked as 305.

11:59:32 18 MR. IBRAHIM: And I don't have the marked
11:59:33 19 copy, Kevin. I'd like to try to keep --

11:59:38 20 MR. EVANS: That's all right.

11:59:39 21 MR. IBRAHIM: -- the numbering.

11:59:41 22 MR. EVANS: That's all right. As long as
11:59:43 23 you're representing it's 305.

11:59:46 24 MR. IBRAHIM: Yeah.

12:00:09 25 Actually, do you mind just marking it

**IN THE UNITED STATES DISTRICT COURT
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NIC SALOMON,

Plaintiff,

V.

**KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN CAPITAL LLC,**

Defendants.

**CIVIL ACTION NO.
3:15-CV-666-M**

EXHIBIT I

**AFFIDAVIT OF KEVIN D. EVANS IN SUPPORT OF
KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR
CHANNEL HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

-----x

4 NIC SALOMON,

Plaintiff,

5 vs.

Civil Action No. 3:15-CV-666-M

Date: June 7, 2018

6 KROENKE SPORTS & ENTERTAINMENT,
7 LLC, OUTDOOR CHANNEL HOLDINGS,
8 INC., AND PACIFIC NORTHERN CAPITAL
9 LLC,

Defendants.

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10 DEPOSITION OF ROGER WERNER

11 The deposition of Roger Werner was taken on
12 June 7, 2018, beginning at 9:07 a.m., at the One
13 Landmark Square, Stamford, Connecticut before Susan
14 Wandzilak, Registered Professional Reporter and Notary
15 Public in the State of Connecticut.
16

17 Susan Wandzilak License No. 377
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1 will need to set up a disinterested committee on the
2 board.

3 Mr. Salomon has testified that the Roger he
4 is referring to here was, that Mr. Hornish was
5 referring to here was you.

6 A. Right.

7 Q. And during his deposition Mr. Salomon
8 testified, and this is a quote, he meaning you did
9 tell me that he would, that he had an interest in
10 investing in the business. Do you recall a
11 conversation with Mr. Salomon where you said you had
12 an interest in investing in the business?

13 A. On a hypothetical level I think that
14 discussion happened a couple of times, never got
15 really serious from my point of view. But Nic had
16 asked me whether I would, you know, whether I would
17 include myself in the group and if I had an interest.
18 And I think I responded a couple of times I possibly
19 would be, you know, possibly.

20 Q. Okay.

21 A. At the end of the day, as I mentioned, the
22 business, the business was a challenged business. It
23 was a relatively low margin capital intensive business
24 so my interest, my interest in it wasn't extremely
25 high. But from time to time I had thought that maybe

1 we could improve the business, change the business
2 model and make it into something bigger and better.

3 Q. Okay.

4 A. But never really got anywhere.

5 Q. So Mr. Hornish is referring to the setup of a
6 disinterested committee on the board.

7 A. Um-uh.

8 Q. Do you recall whether a disinterested
9 committee of the board was set up?

10 A. I don't think so because I wasn't at that
11 time, you know, when we started actually transacting
12 for the overall business, my interest in the aerial
13 camera business sort of subsided and I didn't think
14 there was any need for it.

15 Q. Okay.

16 (Whereupon, Werner Exhibit No. 91 was marked
17 for identification.)

18 BY MR. EVANS:

19 Q. So Exhibit 91 bears control Nos.
20 KSE/OC:000044. It's from Nic Salomon. It's dated
21 June 19, 2012 and the e-mail address on this is Roger
22 LW at Roger L. Baron at Yahoo dot com. Do you know
23 who that is?

24 A. Yeah, rlbaron@yahoo.com is my -- is a
25 personal e-mail of mine.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NIC SALOMON,

Plaintiff,

v.

**KROENKE SPORTS & ENTERTAINMENT,
LLC, OUTDOOR CHANNEL HOLDINGS,
INC., and PACIFIC NORTHERN CAPITAL LLC,**

Defendants.

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**CIVIL ACTION NO.
3:15-CV-666-M**

EXHIBIT J

**AFFIDAVIT OF KEVIN D. EVANS IN SUPPORT OF
KROENKE SPORTS & ENTERTAINMENT, LLC AND OUTDOOR
CHANNEL HOLDINGS, INC.'S MOTION PURSUANT TO FED. R. EVID. 702 TO
EXCLUDE TESTIMONY OF KEVIN KREITZMAN AND REQUEST FOR HEARING**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO. 3:15-CV-00666-M

RULE 30(B)(6) VIDEOTAPE DEPOSITION OF:
SCOTT M. LONG - SEPTEMBER 5, 2018
KROENKE SPORTS & ENTERTAINMENT, LLC

NIC SALOMON,

PLAINTIFF,

V.

KROENKE SPORTS & ENTERTAINMENT, LLC, OUTDOOR CHANNEL
HOLDINGS, INC., AND PACIFIC NORTHERN CAPITAL, LLC,
DEFENDANTS.

PURSUANT TO NOTICE, THE RULE 30(B)(6)
VIDEOTAPE DEPOSITION OF SCOTT M. LONG, KROENKE
SPORTS & ENTERTAINMENT, LLC, WAS TAKEN ON BEHALF OF
THE PLAINTIFF AT 4643 SOUTH ULSTER STREET, SUITE 800,
DENVER, COLORADO 80237, ON SEPTEMBER 5, 2018, AT
10:13 A.M., BEFORE TRACY C. MASUGA, REGISTERED
PROFESSIONAL REPORTER, CERTIFIED REALTIME REPORTER,
AND NOTARY PUBLIC WITHIN COLORADO.

JOB NO. 137838

13:40:04 1 A. I would need to review the documents. I
13:40:06 2 know there were -- it was a back-and-forth bidding war
13:40:09 3 before it finally settled, and I would not -- I would
13:40:12 4 need to refer to whatever the document -- the SEC
13:40:15 5 filings at that time.

13:40:15 6 Q. So I want you to assume for the sake of
13:40:19 7 my questioning that the offer was for \$8.75 a share.
13:40:24 8 Do you have that assumption in mind?

13:40:25 9 A. Okay. 8.75 a share.

13:40:28 10 Q. What portion of that \$8.75-a-share offer
13:40:37 11 was attributable to the aerial camera business?

13:40:42 12 MR. EVANS: Objection. It's beyond the
13:40:44 13 scope of topic 15. The witness has already testified
13:40:48 14 to this. He's not here as an expert, and he's not
13:40:52 15 going to give you his opinion.

13:40:53 16 Q. (BY MR. IBRAHIM) You may answer.

13:40:54 17 A. So as I said before, there was not a
13:40:56 18 specific valuation made of the individual pieces. The
13:40:59 19 valuation -- the offer was made for the entire assets
13:41:02 20 of the company, and there was not a specific amount.

13:41:07 21 Q. And there were various offers made
13:41:09 22 between February 27, 2013, up until the time of the
13:41:14 23 closing, May 17, 2013. You recall that?

13:41:17 24 A. I believe that's correct, yes.

13:41:18 25 Q. Okay. And so your testimony, if I

13:41:21 1 understand it correctly, is that with regards to all
13:41:24 2 of those offers, not just the February 27, 2013,
13:41:27 3 offer, but with regards to all of the offers that KSE
13:41:31 4 made, KSE did not make any determination of what
13:41:37 5 portion of that offer was attributable to the aerial
13:41:43 6 camera business; am I correct?

13:41:44 7 A. That is correct.

13:41:45 8 Q. And at no point in time during that time
13:41:48 9 period between February 27, 2013, and May 16, 2013,
13:41:54 10 did KSE ever make a determination of what the monetary
13:41:58 11 value of the aerial camera business was, at any point
13:42:02 12 during that time period?

13:42:03 13 MR. EVANS: Objection, asked and
13:42:05 14 answered.

13:42:05 15 A. Yes, there was none done.

13:42:07 16 Q. (BY MR. IBRAHIM) Okay. So it's open to
13:42:08 17 interpretation, right?

13:42:10 18 MR. EVANS: Objection. You're not here
13:42:11 19 as an expert. You're here to give opinion -- or not
13:42:15 20 here to give opinions. You're here to testify as a
13:42:18 21 30(b)(6) witness. That's an opinion question, and I'm
13:42:21 22 instructing you not to answer.

13:42:23 23 MR. IBRAHIM: Excuse me. The witness
13:42:24 24 testified that it's open to interpretation, and so I'm
13:42:26 25 just confirming his earlier testimony.